

Chapter 8  
Investment

Article 90  
Scope and Coverage

1. This Chapter shall apply to measures by a Party relating to:
  - (a) investors of the other Party;
  - (b) investments of investors of the other Party in the Area of the former Party; and
  - (c) with respect to Article 111, all investments in the Area of the former Party.
2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.
3. This Chapter shall not apply to measures by a Party relating to investors of the other Party and their investments in service sectors.
4. Notwithstanding paragraph 3 above:
  - (a) Articles 94, 95, 96, 100, 102, 103, 105, 106, 107, 109, 110, 111 and 112 shall apply to measures by a Party relating to investors of the other Party and their investments in service sectors other than financial services sector with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments; and
  - (b) Articles 94, 102, 103, 105, 109 and 112 shall apply to measures by a Party relating to investors of the other Party and their investments in financial services sector with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments.

Note 1: For the purposes of subparagraph (b) above, compensation under Article 102, if any, shall be no more than the net asset value which is calculated from the difference between the value of assets and the value of liabilities including contingent liabilities of the affected enterprise supplying financial services.

Note 2: Within the definition of investments under this Chapter, investments referred to in subparagraph (b) above shall be limited to equity interest, reinvested earnings and permanent debt (that is loan capital).

5. Articles 93 and 96 shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 or 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as "the TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

6. This Chapter shall not apply to laws, regulations or procedures and practices governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

#### Article 91 Definitions

For the purposes of this Chapter:

- (a) the term "Area" means with respect to a Party:
  - (i) the territory of that Party, including its territorial sea; and
  - (ii) the exclusive economic zone and the continental shelf with respect to which that Party exercises sovereign rights or jurisdiction in accordance with international law;
- (b) the term "buyer credit" means a fixed amount of credit under a financing contract between an investor and a buyer or a consumer, under which the investor of a Party makes a loan directly to the buyer of imported goods or the consumer of services other than financial services in the Area of the other Party specifically for the purpose of enabling the buyer or the consumer to make payments to a seller of the goods or a provider of the services in the Area of the former Party in relation to the sales contract of the goods or the services between the seller or the provider and the buyer or the consumer, but does not include a

credit which is repaid within 3 years from the starting date of the financing contract;

- (c) the term "direct investment enterprise" means:
- (i) an enterprise in the Area of a Party in which an investor of the other Party directly owns at least 10 percent of the total equity interest in the enterprise; or
  - (ii) an enterprise in the Area of a Party in which an investor of the other Party, whether directly and indirectly, or indirectly, owns equity interest such that at least 10 percent of the total equity interest in that enterprise is attributable to such investor;
- (d) the term "direct investor" means:
- (i) an investor of a Party who directly owns at least 10 percent of the total equity interest in an enterprise in the Area of the other Party; or
  - (ii) an investor of a Party who directly and indirectly, or indirectly, owns equity interest in an enterprise in the Area of the other Party such that at least 10 percent of the total equity interest in that enterprise is attributable to such investor;

Note: For the purposes of subparagraphs (c) and (d) above, "indirectly owns" means ownership of equity interest in an enterprise by an investor through one or more successive enterprises, each of which directly owns at least 10 percent of the total equity interest of the next enterprise. Such ownership by the investor shall be based on the investor's level of equity interest in such enterprises. The level of equity interest in each enterprise shall be sufficient to ensure attribution of at least 10 percent of the total equity interest of that enterprise to that investor.

- (e) the term "enterprise of the other Party" means any legal entity duly constituted or organised under applicable law of the other Party, 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, association, organisation, company or branch;

- (f) an enterprise is:
  - (i) "owned" by persons of a Party or a non-Party if more than 50 percent of the equity interest in it is beneficially owned by such persons; and
  - (ii) "controlled" by persons of a Party or a non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (g) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of GATS;
- (h) the term "freely usable currencies" means freely usable currencies as determined by the International Monetary Fund under the Articles of the Agreement of the International Monetary Fund, as may be amended;
- (i) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

Note: With respect to Article 111, the term "investment activities" includes those activities by investors of non-Parties, in which case the term "investments" also includes those owned by investors of non-Parties.

- (j) the term "investments" means:
  - (i) the following assets owned by a direct investor:
    - (AA) shares, stocks or other forms of equity interest in a direct investment enterprise, including rights derived therefrom;
    - (BB) reinvested earnings in a direct investment enterprise; or
    - (CC) bonds, debentures, other debt instruments and loans between a direct

investor and its direct investment enterprise, including rights derived therefrom;

(ii) the following assets owned by a direct investment enterprise or its direct investor, arising out of transactions between the direct investor and the direct investment enterprise:

(AA) claims to money and claims to any performance under contracts having a financial value;

(BB) intellectual property rights as recognised by the laws and regulations of the Party in whose Area the investment is made;

(CC) rights conferred pursuant to the laws and regulations of the Party in whose Area the investment is made or contracts such as concessions, licences, authorisations, and permits; or

(DD) any other tangible and intangible, movable and immovable property, and any property rights, such as leases, mortgages, liens and pledges; or

(iii) the following assets directly owned by an investor:

(AA) supplier credit where the original maturity is at least 3 years;

(BB) buyer credit where the original maturity is at least 3 years;

(CC) project financing where the original maturity is at least 5 years; or

(DD) rights under turnkey contracts;

Note 1: The term "investments" includes amounts yielded by investments, in particular, profits, capital gains, dividends, royalties, interests, fees and other current incomes. A change in the form in which assets are invested does not affect their character as investments.

Note 2: With respect to subparagraph 1(c) of Article 90, the term "investments" also includes those owned by

investors of non-Parties.

- (k) the term "investor of the other Party" means a national or an enterprise that is making, or has made, investments in the Area of a Party and is a national or an enterprise of the other Party, except a branch of an enterprise of a non-Party which is located in the Area of the other Party;
- (l) the term "measure" means any measure by a Party whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (m) the term "measures by a Party" means measures adopted or maintained by central or local governments and authorities;
- (n) the term "national of the other Party" means a natural person having the nationality of the other Party in accordance with its applicable laws and regulations;
- (o) the term "person" means either a natural person or an enterprise;
- (p) the term "project financing" means a loan under a financing contract under which an investor of a Party makes a loan of a fixed amount to an enterprise established in the Area of the other Party for the specific purpose of enabling that enterprise to carry out a particular project, where the assets of the project are furnished as collateral for the loan, but does not include a loan which is repaid within 5 years from the starting date of the financing contract;

Note: The project referred to in subparagraph (p) above shall be economically value-added, and not purely engaged in financial transactions only.

- (q) the term "reinvested earnings" means direct investor's share, in proportion to equity interest, of earnings which are not distributed as dividends or remitted from a direct investment enterprise to its direct investor;
- (r) the term "supplier credit" means a fixed amount of credit under a financing contract between an investor and a buyer or a consumer, under which the investor who is a seller of exported goods or

a provider of services other than financial services in the Area of a Party allows the buyer of the goods or the consumer of the services in the Area of the other Party to defer payment under the sales contract of the goods or the services between the investor and the buyer or the consumer, but does not include a credit which is repaid within 3 years from the starting date of the financing contract;

- (s) the term "transfers" means transfers and international payments;

#### Article 92

##### Observance of the Provisions of this Chapter

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and authorities within its Area.

#### Article 93

##### National Treatment

1. In the sectors inscribed in Part 1 of Annex 6, and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition and expansion of investments in its Area.

2. Each Party shall, subject to its laws and regulations existing on the date of entry into force of this Agreement, accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.

3. Paragraph 2 above shall not apply to any measures specified by a Party in Part 2 of Annex 6.

#### Article 94

##### Access to the Courts of Justice

Each Party shall in its Area accord to investors of the other Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a non-Party with respect to access to its courts of justice and administrative tribunals and agencies

in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 95  
Minimum Standard of Treatment

Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights. 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 96  
Most-Favoured-Nation Treatment

1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement with respect to the establishment, acquisition and expansion of investments.

2. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party and to their investments with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.

3. Paragraph 2 above shall not be construed so as to oblige a Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of any customs union, free trade area, a monetary union, similar international agreements leading to such unions or free trade areas, or other forms of regional economic cooperation to which either Party is or may become a party.



4. Paragraph 2 above shall not apply to any measures specified by a Party in Part 3 of Annex 6.

Article 97  
Performance Requirements

1. Nothing in this Chapter shall prevent either Party from imposing or enforcing, as a condition for investment activities in its Area, any performance requirements, unless otherwise specified in Part 1 of Annex 6.

2. Nothing in this Chapter shall prevent either Party from imposing or enforcing, as a condition for granting or continued granting of an advantage, any performance requirements in connection with investment activities in its Area, unless otherwise specified in Part 1 of Annex 6.

3. Nothing in this Article and Annex 6 shall affect the rights and obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended.

Article 98  
Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under paragraph 1 of Article 93 and paragraphs 1 and 2 of Article 97.

2. With respect to sectors where the commitments are undertaken, each Schedule of specific commitments in Part 1 of Annex 6 shall specify, where applicable:

- (a) conditions and qualifications on national treatment; and
- (b) any commitments on performance requirements.

3. Schedule of specific commitments shall be annexed to this Agreement as Part 1 of Annex 6.

Article 99  
Modification of Commitments

Any modification or withdrawal of specific commitments under this Chapter shall be made in accordance with Article 171. In the negotiations for such modification or withdrawal, the Parties shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to investment than that provided for in their Schedules of specific commitments in Annex 6 prior to such negotiations.

Article 100  
Acquired Treatment

Each Party shall maintain, in accordance with its laws and regulations, the level of treatment which has been accorded to investors of the other Party and their investments with respect to investment activities.

Article 101  
Transparency

1. Each Party shall ensure that its laws, regulations, administrative procedures, and administrative rulings of general application with respect to any matter covered by this Chapter are published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible under its domestic laws and regulations, each Party shall:

- (a) publish any such laws, regulations, administrative procedures and administrative rulings of general application that it adopts; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such measures.

Article 102  
Expropriation and Compensation

1. Neither Party shall expropriate or nationalise investments in its Area of investors of the other Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

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

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall carry an appropriate interest, in accordance with the laws and regulations of the Party making the expropriation. It shall be effectively realisable and freely transferable in a freely usable currency and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies.

4. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case and the amount of compensation in accordance with the principles set out in this Article.

#### Article 103 Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a non-Party.

2. Any payments made pursuant to paragraph 1 above shall be effectively realisable, freely convertible and freely transferable in a freely usable currency.

#### Article 104 Transfers

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely in a freely usable currency and without delay. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;

- (d) payments made under a contract including loan payments in connection with investments;
- (e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party;
- (f) payments made in accordance with Articles 102 and 103; and
- (g) payments arising out of the settlement of a dispute under Article 106.

2. Neither Party shall prevent transfers referred to in paragraph 1 above from being made without delay in a freely usable currency at the market rate of exchange prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer referred to in paragraph 1 above 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 matters; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 105  
Subrogation

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or contract of insurance, arising from or pertaining to an investment of that investor within the Area of the other Party, the other Party shall:

- (a) recognise the assignment, to the former Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and
- (b) recognise the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. Articles 102, 103 and 104, shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.

Article 106  
Settlement of Investment Disputes  
between a Party and an Investor of the Other Party

1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party concerning a claim that the investor has incurred loss or damage by reason of, or arising out of, an alleged breach of an obligation under this Chapter by the former Party.

2. In the event of an investment dispute, such investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.

3. If the investment dispute cannot be settled through such consultations within 6 months from the date on which the investor requested for the consultations in writing and if the investor concerned has not submitted the investment dispute for resolution to courts of justice or administrative tribunals under the law of the Party that is a party to the investment dispute (hereinafter referred to in this Article as the "disputing Party"), that investor may submit the investment dispute to one of the following international conciliations or arbitrations:

- (a) conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, 18 March 1965, as may be amended (hereinafter referred to in this Article as "the ICSID Convention"), provided that both Parties are parties to the ICSID Convention;
- (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, as may be amended provided that one of the Parties is a party to the ICSID Convention; or
- (c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on

International Trade Law on 28 April 1976, as may be amended.

In respect of a particular claim, exercise of the right under this paragraph to submit an investment dispute to an arbitration shall be deemed to have been made to the exclusion of any other dispute settlement procedures specified in this paragraph and proceedings before courts of justice or administrative tribunals under the law of the disputing Party, unless the arbitration proceedings have been terminated before a final award on the merit of the case has been rendered.

4. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified by this Article.

5. An investor that is a party to an investment dispute who intends to submit an investment dispute pursuant to subparagraph 3(a), (b) or (c) above (hereinafter referred to in this Article as the "disputing investor") shall give to the disputing Party written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the disputing investor;
- (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and
- (c) the dispute settlement procedures set forth in subparagraph 3(a), (b) or (c) above which the disputing investor intends to choose.

6. Each Party hereby consents to the submission of investment disputes to international conciliation or arbitration as provided for in this Article. If more than 2 years have elapsed since the date the disputing investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the disputing investor, the consent above shall be invalidated.

7. Paragraph 3 above shall not prevent the disputing investor from initiating or continuing an action that seeks interim injunctive relief that does not involve the payment of damages before courts of justice or administrative tribunals under the law of the disputing Party provided that the action is brought for the sole purpose of preserving the

disputing investor's rights and interests while the arbitration is pending.

8. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as the "disputing parties") agree otherwise, the arbitral tribunal shall comprise 3 arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator within 75 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes, upon request by either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed subject to the requirement of paragraphs 9 and 10 below.

9. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Party, nor have his or her usual place of residence in the Area of either of the Parties, nor be employed by either of the disputing parties at the time of his or her appointment.

10. Each of the disputing parties may indicate up to 3 nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the International Centre for Settlement of Investment Disputes may not appoint as an arbitrator any person whose nationality is indicated by any of the disputing parties.

11. Any arbitration under this Article shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, as may be amended.

12. Where an arbitral tribunal makes a final award against a disputing Party, it may award, separately or in combination, only:

- (a) payment of monetary damages and applicable interest; and
- (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.

Costs may also be awarded in accordance with the

applicable arbitration rules.

13. Any arbitral award rendered pursuant to this Article shall be final and binding upon the disputing parties. Each Party shall carry out without delay the provisions of any such award and provide in its Area for the enforcement of such award in accordance with its relevant laws and regulations.

14. In an arbitration under this Article, a Party shall not assert, as a defense, counterclaim, right of set-off 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.

15. This Article shall not apply to investment disputes:

- (a) arising out of events which occurred, or to investment disputes which had been settled, prior to the entry into force of this Agreement;
- (b) with respect to obligations under Article 97; and
- (c) with respect to measures other than those relating to the management, conduct, operation, maintenance, use, enjoyment, and sale or other disposition of investments.

#### Article 107 Special Formalities

Notwithstanding Articles 93 and 96, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

#### Article 108 Temporary Safeguard Measures

1. A Party may adopt or maintain measures inconsistent with its obligations under Article 93 relating to cross-border capital transactions and Article 104:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof;  
or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause economic or financial crisis.



2. The measures referred to in paragraph 1 above:
  - (a) shall ensure that the other Party is treated as favourably as any non-Party;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above; and
  - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 above improves.
3. In determining the incidence of such measures, a Party may give priority to the sectors which are more essential to its economic development. However, such measures shall not be adopted or maintained for the purposes of protecting a particular sector.
4. Any measures adopted or maintained under paragraph 1 above, or any changes therein, shall be promptly notified to the other Party.
5. The Party applying any measures in accordance with paragraph 1 above may, upon request by the other Party, commence consultations with the other Party promptly in order to review the measures adopted by the former Party.
6. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 109  
Prudential Measures and  
Measures to Ensure the Stability of the Macroeconomy or  
the Exchange Rate

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking:
  - (a) measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is

owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system; or

- (b) measures to ensure the stability of the macroeconomy or the exchange rate.

Note: The measures referred to in subparagraph (b) above include measures relating to monetary policy or measures to deter speculative capital flows. Such measures shall be no more than necessary to meet the objectives of ensuring the stability of the macroeconomy or the exchange rate. Measures to ensure the stability of the macroeconomy or the exchange rate do not cover measures relating to promotion or protection of a particular sector.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

#### Article 110 Taxation Measures as Expropriation

1. Article 102 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 102.

2. Where paragraph 1 above applies, Articles 94 and 106 shall also apply in respect of taxation measures.

3.

- (a) No investor may invoke Article 102 as the basis for an investment dispute under Article 106, where it has been determined pursuant to subparagraph (b) below that the measure is not an expropriation.

- (b) The investor who seeks to invoke Article 102 with respect to a taxation measure shall refer the issue, at the time that it gives a written request under paragraph 5 of Article 106, to the competent authorities of both Parties to determine whether such a measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 106.

- (c) For the purpose of subparagraph (b) above, the term "competent authorities" means:
  - (i) in the case of Japan, the Minister of Finance or his authorised representative; and
  - (ii) in the case of Thailand, the Minister of Finance or his authorised representative.

Article 111  
Environmental Measures

Each Party recognises that it is inappropriate to encourage investment by relaxing its environmental measures. To this effect, each Party shall not waive or otherwise derogate from such environmental measures as an encouragement for investment activities in its Area.

Article 112  
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 other Party and to investments of such investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of such investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the Area of that other Party.

Article 113  
Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as the "Sub-Committee") shall be established pursuant to Article 13.

2. The functions of the Sub-Committee shall be:

- (a) reviewing the implementation and operation of this Chapter;
- (b) exchanging information on any matters related to this Chapter;
- (c) discussing any issues related to this Chapter as may be agreed upon;
- (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions which may be delegated by the Joint Committee in accordance with Article 13.

Article 114  
Review

The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a general review of their commitments made under Articles 93 and 97 in all non-service sectors and shall enter into negotiation within the sixth year after the date of entry into force of this Agreement for a review of the provisions of paragraphs 4 and 6 of Article 90 and of Article 96.