

## **Chapter Fourteen**

### **Financial Services**

#### **Article 1401: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of another Party;
  - (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
2. Articles 1109 through 1111, 1113, 1114 and 1211 are hereby incorporated into and made a part of this Chapter. Articles 1115 through 1138 are hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 1109 through 1111, 1113 and 1114, as incorporated into this Chapter.
3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:
  - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
  - (b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.
4. Annex 1401.4 applies to the Parties specified in that Annex.

#### **Article 1402: Self-Regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self-regulatory organization.

### **Article 1403: Establishment of Financial Institutions**

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.
2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:
  - (a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;
  - (b) expand geographically in that Party's territory; and
  - (c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.
3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.
4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:
  - (a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or
  - (b) impose terms and conditions on establishment that are consistent with Article 1405.
5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party.

### **Article 1404: Cross-Border Trade**

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of another Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Party's Schedule to Annex VII.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of another Party located in

the territory of that other Party or of another Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of another Party and of financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.

#### **Article 1405: National Treatment**

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

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

3. Subject to Article 1404, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of another Party treatment no less favorable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of such service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a measure of any state or province:

- (a) in the case of an investor of another Party with an investment in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in a state or province, treatment no less favorable than the treatment accorded to an investor of the Party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in that state or province, in like circumstances; and
- (b) in any other case, treatment no less favorable than the most favorable treatment accorded to an investor of the Party in a financial institution, its financial institution or its investment in a financial institution, in like circumstances.

For greater certainty, in the case of an investor of another Party with investments in financial

institutions or financial institutions of such investor, located in more than one state or province, the treatment required under subparagraph (a) means:

- (c) treatment of the investor that is no less favorable than the most favorable treatment accorded to an investor of the Party with an investment located in such states or provinces, in like circumstances; and
- (d) with respect to an investment of the investor in a financial institution or a financial institution of such investor, located in a state or province, treatment no less favorable than that accorded to an investment of an investor of the Party, or a financial institution of such investor, located in that state or province, in like circumstances.

5. A Party's treatment of financial institutions and cross-border financial service providers of another Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

6. A Party's treatment affords equal competitive opportunities if it does not disadvantage financial institutions and cross-border financial services providers of another Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and financial services providers to provide such services, in like circumstances.

7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

#### **Article 1406: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions and cross-border financial service providers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the other Party or non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide

adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

#### **Article 1407: New Financial Services and Data Processing**

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.

#### **Article 1408: Senior Management and Boards of Directors**

1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

#### **Article 1409: Reservations and Specific Commitments**

1. Articles 1403 through 1408 do not apply to:

- (a) any existing non-conforming measure that is maintained by
  - (i) a Party at the federal level, as set out in Section A of its Schedule to Annex VII,
  - (ii) a state or province, for the period ending on the date specified in Annex 1409.1 for that state or province, and thereafter as described by the Party in

Section A of its Schedule to Annex VII in accordance with Annex 1409.1,  
or

- (iii) a local 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 1403 through 1408.
2. Articles 1403 through 1408 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VII.
3. Section C of each Party's Schedule to Annex VII sets out certain specific commitments by that Party.
4. Where a Party has set out a reservation to Article 1102, 1103, 1202 or 1203 in its Schedule to Annex I, II, III or IV, the reservation shall be deemed to constitute a reservation to Article 1405 or 1406, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.

#### **Article 1410: Exceptions**

1. Nothing in this Part shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
- (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and
  - (c) ensuring the integrity and stability of a Party's financial system.
2. Nothing in this Part applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 1106 (Performance Requirements) with respect to measures covered by Chapter Eleven (Investment) or Article 1109 (Transfers).
3. Article 1405 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 1401(3)(a).

4. Notwithstanding Article 1109(1), (2) and (3), as incorporated into this Chapter, and without limiting the applicability of Article 1109(4), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial services provider to, or for the benefit of, an affiliate of or person related to such institution or provider, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

#### **Article 1411: Transparency**

1. In lieu of Article 1802(2) (Publication), each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

- (a) by means of official publication;
- (b) in other written form; or
- (c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party's regulatory authorities shall make available to interested persons their requirements for completing applications relating to the provision of financial services.

3. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of another Party relating to the provision of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

5. Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or

- (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

6. Each Party shall maintain or establish one or more inquiry points no later than 180 days after the date of entry into force of this Agreement, to respond in writing as soon as practicable, to all reasonable inquiries from interested persons regarding measures of general application covered by this Chapter.

#### **Article 1412: Financial Services Committee**

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1412.1.

2. Subject to Article 2001(2)(d) (Free Trade Commission), the Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 1415.

3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.

#### **Article 1413: Consultations**

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 1412.1.

3. A Party may request that regulatory authorities of another Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service providers in the requesting Party's territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in another Party's territory or a cross-border financial service provider in another Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Annex 1413.6 shall apply to further consultations and arrangements.

#### **Article 1414: Dispute Settlement**

1. Section B of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish by January 1, 1994 and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years, and may be reappointed.

3. Financial services roster members shall:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and
- (c) meet the qualifications set out in Article 2009(2)(b) and (c) (Roster).

4. Where a Party claims that a dispute arises under this Chapter, Article 2011 (Panel Selection) shall apply, except that:

- (a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
- (b) in any other case,
  - (i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 2010(1) (Qualifications of Panelists), and
  - (ii) if the Party complained against invokes Article 1410, the chair of the panel shall meet the qualifications set out in paragraph 3.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### **Article 1415: Investment Disputes in Financial Services**

1. Where an investor of another Party submits a claim under Article 1116 or 1117 to arbitration under Section B of Chapter Eleven (Investment - Settlement of Disputes between a Party and an Investor of Another Party) against a Party and the disputing Party invokes Article 1410, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1410 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 1414. Further to Article 2017 (Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

#### **Article 1416: Definitions**

For purposes of this Chapter:

**cross-border financial service provider of a Party** means a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide

or provides financial services through the cross-border provision of such services;

**cross-border provision of a financial service** or **cross-border trade in financial services** means the provision of a financial service:

- (a) from the territory of a Party into the territory of another Party,
- (b) in the territory of a Party by a person of that Party to a person of another Party, or
- (c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment in that territory;

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of another Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

**financial service** means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

**financial service provider of a Party** means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party;

**investment** means "investment" as defined in Article 1139 (Investment - Definitions), except that, with respect to "loans" and "debt securities" referred to in that Article:

- (a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

- (c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and
- (d) a loan granted by or debt security owned by a cross-border financial service provider, other than a loan to or debt security issued by a financial institution, is an

investment if such loan or debt security meets the criteria for investments set out in Article 1139;

**investor of a Party** means a Party or state enterprise thereof, or a person of that Party, that seeks to make, makes, or has made an investment;

**new financial service** means a financial service not provided in the Party's territory that is provided within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

**person of a Party** means "person of a Party" as defined in Chapter Two (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

**self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

**Annex 1401.4**

**Country-Specific Commitments**

For Canada and the United States, Article 1702(1) and (2) of the *Canada - United States Free Trade Agreement* is hereby incorporated into and made a part of this Agreement.

**Annex 1403.3**

**Review of Market Access**

The review of market access referred to in Article 1403(3) shall not include the market access limitations specified in Section B of the Schedule of Mexico to Annex VII.

**Annex 1404.4**

**Consultations on Liberalization of Cross-Border Trade**

No later than January 1, 2000, the Parties shall consult on further liberalization of cross-border trade in financial services. In such consultations the Parties shall, with respect to insurance:

- (a) consider the possibility of allowing a wider range of insurance services to be provided on a cross-border basis in or into their respective territories; and
- (b) determine whether the limitations on cross-border insurance services specified in Section A of the Schedule of Mexico to Annex VII shall be maintained, modified or eliminated.

**Annex 1409.1**

**Provincial and State Reservations**

1. Canada may set out in Section A of its Schedule to Annex VII by the date of entry into force of this Agreement any existing non-conforming measure maintained at the provincial level.
2. The United States may set out in Section A of its Schedule to Annex VII by the date of entry into force of this Agreement any existing non-conforming measures maintained by California, Florida, Illinois, New York, Ohio and Texas. Existing non-conforming state measures of all other states may be set out by January 1, 1995.

**Annex 1412.1**

**Authorities Responsible for Financial Services**

The authority of each Party responsible for financial services shall be:

- (a) for Canada, the Department of Finance of Canada;
- (b) for Mexico, the Secretaría de Hacienda y Crédito Público; and
- (c) for the United States, the Department of the Treasury for banking and other financial services and the Department of Commerce for insurance services.

## Annex 1413.6

### Further Consultations and Arrangements

#### *Section A - Limited Scope Financial Institutions*

Three years after the date of entry into force of this Agreement, the Parties shall consult on the aggregate limit on limited scope financial institutions described in paragraph 8 of Section B of the Schedule of Mexico to Annex VII.

#### *Section B - Payments System Protection*

1. If the sum of the authorized capital of foreign commercial bank affiliates (as such term is defined in the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25 percent, Mexico may request consultations with the other Parties on the potential adverse effects arising from the presence of commercial banks of the other Parties in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation. The consultations shall be completed expeditiously.
2. In considering the potential adverse effects, the Parties shall take into account:
  - (a) the threat that the Mexican payments system may be controlled by non-Mexican persons;
  - (b) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange-rate policy effectively; and
  - (c) the adequacy of this Chapter in protecting the Mexican payments system.
3. If no consensus is reached on the matters referred to in paragraph 1, any Party may request the establishment of an arbitral panel under Article 1414 or Article 2008 (Request for an Arbitral Panel). The panel proceedings shall be conducted in accordance with the Model Rules of Procedure established under Article 2012 (Rules of Procedure). The Panel shall present its determination within 60 days after the last panelist is selected or such other period as the Parties to the proceeding may agree. Article 2018 (Implementation of Final Report) and 2019 (Non-Implementation -- Suspension of Benefits) shall not apply in such proceedings.