

Chapter Fourteen

Financial Services

Article 1401: Scope

1. This Chapter shall apply 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. Only Articles 1109 (Transfers), 1110 (Expropriation and Compensation), 1111 (Special Formalities and Information Requirements), 1113 (Denial of Benefits), 1114 (Environmental Measures) and Articles 1115 to 1136 (Settlement of Disputes Between a Party and an Investor of Another Party) of Chapter Eleven (Investment) and Article 1211 (Denial of Benefits) of Chapter Twelve (Cross-Border Trade in Services) shall apply to this Chapter. Article 1802(2) (Publication) shall not apply to this Chapter.

3. In the event of any inconsistency between a provision of this Chapter and any other provision of this Agreement, the former shall prevail to the extent of the inconsistency. This paragraph does not apply to Article 2103 (Taxation).

4. Nothing in this Chapter shall prevent a Party from being the exclusive service provider in its territory with respect to the following:

- (a) activities forming part of a public retirement plan or statutory system of social security; and
- (b) activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government or of any other public entity.

5. Article 1407 shall not apply to the granting by a Party to a financial service provider of an exclusive right to provide a financial service referred to in paragraph 4(a).

6. Each Party shall comply with Annex 1401.6.

Article 1402: Self-Regulatory Organizations

Where a Party requires financial service providers of

another Party to be members of, participate in, or have access to, a self-regulatory organization to provide a financial service in the territory of that Party, the Party shall ensure observance by such organization of this Chapter.

Article 1403: Regulatory Measures

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 service provider or financial institution;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service providers or financial institutions; 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), Article 1109 (Transfers) and Article 2104 (Balance of Payments).

Article 1404: Establishment

1. The Parties recognize the principle that financial service providers of a Party should be permitted to establish financial institutions in the territory of another Party in the juridical form determined by the provider.

2. The Parties also recognize the principle that financial service providers of a Party should be permitted to participate widely in the market of another Party through the ability:

(a) to provide in that other Party's territory a range of financial services through separate financial institutions as may be required by that Party;

(b) to expand geographically within that territory; and

(c) to own financial institutions without the application of ownership requirements specific to foreign financial institutions.

3. Each Party shall permit financial service providers of another Party that are not already established in its territory to establish financial institutions in the Party's territory. A Party may:

(a) require such financial service providers to incorporate such financial institutions under its laws; or

(b) impose other terms, conditions and procedures on establishment that are consistent with Article 1407.

4. At such time as the United States liberalizes its existing measures to permit commercial banks of another Party located in its territory to expand throughout significantly all the United States market either through subsidiaries or direct branches, the Parties shall review and assess market access in each Party, subject to Annex 1404.4, with respect to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investor choice as to juridical form of establishment by commercial banks.

5. Each Party shall permit financial institutions of another Party to transfer and process information outside the territory of the Party in electronic or other form as is necessary for the conduct of ordinary business of such institutions.

Article 1405: Cross-Border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by financial service providers of another Party that is permitted on the date of entry into force of this Agreement, except to the extent set out in Part 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 financial service providers of another Party located in the territory of that other Party or another Party, provided that the Party is not required, in order to fulfill this obligation, to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may, for this purpose, define "doing business" and "solicitation."

3. Without prejudice to prudential regulation by other means, a Party may require registration of financial service providers of another Party and financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services, as set out in Annex 1405.4.

Article 1406: New Financial Services

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those that the Party permits its financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which such service may be provided.

2. A Party may require authorization for the provision in its territory of a financial service referred to in paragraph 1. Where such authorization is required, a decision shall be made within a reasonable period of time and may only be refused for prudential reasons.

Article 1407: National Treatment

1. Each Party shall accord to investors of another Party and financial service providers of another Party national treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in financial institutions in its territory.

2. Each Party shall accord to the financial institutions of another Party national treatment.

3. Where a Party permits the cross-border provision of a financial service, it shall accord national treatment to financial service providers of another Party in the provision of such cross-border service.

4. "National treatment" means treatment no less favorable than that accorded by a Party to its own investors, financial service providers and financial institutions in like circumstances.

5. A measure of a Party, whether it accords to financial service providers or financial institutions of another Party different or identical treatment compared to that it accords to its own providers or institutions in like circumstances, shall be deemed to be consistent with paragraph 4, if it accords equal competitive opportunities.

6. A measure accords equal competitive opportunities if it does not disadvantage financial service providers of another Party in their ability to provide financial services as compared with the ability of domestic financial service providers in like circumstances to provide financial services.

7. Differences in market share, profitability or size shall not by themselves constitute denial of equal competitive opportunities, but shall not be precluded from being used as evidence regarding the issue of whether a Party's measure accords equal competitive opportunities.

8. With respect to measures of a province or state, paragraph 4 means:

(a) treatment no less favorable than the most favorable treatment accorded in like circumstances by such province or state to financial service providers of the Party of which it forms a part, including that province or state; or

(b) in the case of a financial service provider of another Party established in another province or state of the Party, treatment no less favorable than it accords in like circumstances to a financial service provider of the Party established in such other province or state.

Article 1408: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, investments of such investors and financial service providers of another Party treatment no less favorable than that it accords to investors, investments of investors and financial service providers of any other Party or non-Party in like circumstances.
2. Each Party may recognize prudential measures of another Party or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the Party concerned or may be accorded unilaterally.
3. A Party recognizing measures by means of an agreement or arrangement referred to in paragraph 2 shall afford adequate opportunity for another Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable one under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties. Where a Party accords recognition unilaterally, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

Article 1409: Staffing

1. No Party may require financial institutions of another Party to engage, as top managerial or other essential personnel, individuals of any particular nationality.
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 1410: Transparency

1. 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 upon 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 shall make available to interested persons the information that applications affecting the provision of financial services must contain.

3. At the request of an applicant, the competent regulatory authority shall provide information concerning the status of an application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make an administrative decision on a completed application of a financial service provider of another Party 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 competent authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

5. Nothing in this Agreement requires a Party to disclose information related to the affairs and accounts of individual customers or any confidential or proprietary information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or prejudice legitimate commercial interests.

6. Each Party shall ensure that inquiry points exist, at the latest 180 days after the date of entry into force of this Agreement, to which all reasonable inquiries from interested persons may be directed regarding any measures of general application taken by that Party with respect to this Chapter. Responses shall be provided in writing as soon as practicable.

Article 1411: Transfers

Without prejudice to other provisions of this Agreement that would permit such actions to be taken, a Party may prevent or limit transfers by a financial service provider or a financial institution to, or for the benefit of, an affiliate of or person related to such provider or institution, through the equitable, non-discriminatory and good faith application of its measures relating to maintenance of the safety and soundness of its financial institutions.

Article 1412: Schedules

1. Articles 1404 through 1409 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 Part A of its Schedule to Annex VII;

(ii) a state or province, as set out by a Party in Part A of its Schedule to Annex VII within the period referred to in that Part; 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 1404 through 1409.

2. A Party shall set out any non-conforming measure maintained at the state or provincial level in Part A of its Schedule to Annex VII within the periods provided therein.

3. Articles 1404 through 1409 do not apply to any measure adopted or maintained by a Party that is consistent with the terms set out by the Party in Part B of its Schedule to Annex VII.

4. A Party shall describe in Part C of its Schedule to Annex VII any specific commitment it is making to any other Party.

5. For the purposes of Article 1413(2), each Party shall specify in Part D of its Schedule to Annex VII its governmental agency responsible for financial services.

6. A Party shall describe in Part E of its Schedule to Annex VII any terms and conditions that an enterprise of another Party must meet to be considered an enterprise of such other Party for the purposes of restrictions specified in that Part.

7. Any reservation or exception set out by a Party in Annexes I through VI under this Part shall be deemed to constitute reservations or exceptions for purposes of Articles 1404 through 1409.

Article 1413: Consultations

1. Any Party may request consultations with another Party at any time regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to such a request. The results of consultations under this Article shall be reported during the annual meeting of the Committee provided for in Article 1414.

2. Consultations under this Article shall be conducted by officials of the governmental agencies responsible for financial services specified in Part D of each Party's Schedule to Annex VII.
3. A Party may request that regulatory authorities of another Party participate in consultations under this Article to discuss that other Party's measures of general application that may affect the operations of financial service providers in the requesting Party's territory.
4. Such regulatory authorities shall not be required 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 service provider in another Party's territory, it may approach the competent regulatory authority in the other Party's territory to seek the information.
6. Each Party shall comply with Annex 1413.6.

Article 1414: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be the officials referred to in Article 1413(2).
2. Subject to Article 2001(2)(d) (The 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;
 - (c) participate in the dispute settlement procedure pursuant to Article 1416; and
 - (d) examine technical issues under this Chapter, including interpretation of this Chapter.
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 1415: Dispute Settlement

1. Disputes arising under this Chapter shall be resolved in accordance with the procedures of Chapter 20 (Institutional

Arrangements and Dispute Settlement Procedures) and this Article.

2. In addition to the roster established under Article 2009 (Roster), the Parties shall establish 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 have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment. Such members shall also meet the qualifications set out in Article 2009(2)(b) and (c).

4. Where a Party alleges that a dispute arises under this Chapter, Article 2011 (Panel Selection) applies to the selection of panelists, except that:

(a) the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3, where the disputing Parties agree;

(b) in any case other than that set out in subparagraph (a)

(i) each disputing Party may select panelists meeting the qualifications of Article 2010(1) (Qualifications of Panelists) or paragraph 3 of this Article, as the Party deems appropriate, and

(ii) if the Party complained against alleges Article 1403 as a defense in the dispute, the chair of the panel must meet the qualifications of paragraph 3 of this Article.

5. Notwithstanding Article 2019(2) (Non-Implementation - Suspension of Benefits), 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 equivalent effect as the measure or matter complained of has in the 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 1416: Investment Disputes in Financial Services

1. Where an investor of another Party submits a claim under Articles 1116 or 1117 to arbitration under Section B of Chapter Eleven (Settlement of Disputes Between a Party and an Investor of Another Party) against a Party and the disputing Party alleges Article 1403 as a defense, on request of the disputing Party, the Tribunal shall refer the matter to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.
2. The Committee shall decide the issue of whether and to what extent Article 1403 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. If 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 a panel pursuant to Article 2008(1) to decide the issue. The matter shall proceed as a dispute under Article 1415. The panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.
4. If no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days following the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article 1417: Definitions

For purposes of this Chapter:

cross-border trade in services and cross-border provision of a service means "cross-border trade in services" and "cross-border provision of a service" as defined in Article 1213 (Definitions);

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 laws of the Party in whose territory it is located;

financial institution of another Party means a financial institution in the territory of a Party that is controlled by nationals or enterprises of another Party;

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

financial service provider of another Party means any national or enterprise of a Party that is engaged in the business of

providing financial services in the territory of a Party and that is providing or intends to provide financial services through an investment in the territory of another Party or through cross-border provision into the territory of another Party;

investment means "investment" as defined in Article 1138 (Definitions), except that:

(a) where the loan is extended to a financial institution, regardless of the original maturity of the loan, it shall only be an investment to the extent it is treated as regulatory capital; or

(b) where the loan is granted by a financial service provider or a financial institution, the loan shall only be an investment if it is made on a cross-border basis and it has an original maturity of at least three years (other than a loan to a Party or state enterprise thereof);

new financial service means a service of a financial nature, including a service related to an existing service or the manner in which a product is delivered, that is not provided by any financial service provider in the territory of a Party but which is provided a financial service provider in the territory of another Party;

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

service provider of a Party means "service provider of a Party" as defined in Chapter 12 (Cross-Border Trade in Services); 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 regulatory or supervisory authority over financial service providers or financial institutions that are members or participants thereof, or that have access thereto.

ANNEX 1401.6

Country Specific Commitments

Articles 1702(1) and (2) of the Canada - United States Free Trade Agreement are incorporated into this Agreement and Canada and the United States agree to act in accordance with and be governed by those Articles.

ANNEX 1404.4

Review of Market Access

The review of market access referred to in Article 1404(4) shall not include the market access limitations specified in Part B of the Schedule of Mexico to Annex VII.

ANNEX 1405.4

Consultations on Liberalization of Cross-Border Trade

By January 1, 2000, the Parties shall consult on further liberalization of cross-border trade in financial services. Such consultations shall include the possibility of allowing a wider range of insurance services to be provided on a cross-border basis in the territory of each Party. With respect to Mexico, such consultations on cross-border insurance services shall determine whether the limitations on cross-border insurance services specified in Part A of the Schedule of Mexico to Annex VII shall be maintained, modified, or eliminated.

ANNEX 1413.6

Future 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 Part 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 Part B of the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25 percent, then 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.

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 various provisions agreed under this Chapter to protect the Mexican payments system.

3. If no consensus is achieved through consultations, which shall be completed in an expeditious time frame, a panel shall be convened under the procedures of Article 2008 (Request for an Arbitral Panel) of the Agreement to render a non-binding recommendation to the Parties no later than 60 days after the panel is convened.