Annex 11
Referred to in Chapter 14 (Investment)

SUBSIDIES

1. With respect to paragraph 7 of Article 14.10 (Investment - Non-Conforming Measures and Exceptions), the treatment of subsidies related to investors of each Party and covered investments may be subject to the review by the Sub-Committee on Investment referred to in Article 14.18(Investment - Sub-Committee on Investment).

2. In the event that either Party considers that its interests have been adversely affected by a subsidy of the other Party, the Parties shall, on request, enter into consultations with a view to resolving the matter.

3. During the consultations referred to in paragraph 2, the Party granting a subsidy shall, if it deems fit, consider a request of the other Party for information relating to the subsidy program, such as:

(a) the domestic laws and regulations under which the subsidy is granted;

(b) the form of the subsidy (e.g. grant, loan, tax concession);

(c) the policy objective and/or purpose of the subsidy;

(d) the dates and duration of the subsidy and any other time limits attached to it; and

(e) the eligibility requirements of the subsidy.

4. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Annex.

Annex 12
Referred to in Chapter 14 (Investment)

EXPROPRIATION

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 14.11 (Investment - Expropriation and Compensation) addresses two situations:

(a) direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(c) the character of the government action, including its objectives.