

PART SEVEN OTHER PROVISIONS

Chapter Twenty

Other Provisions

Article 2001: Tax Convention

Nothing in this Agreement shall affect the rights and obligations of the Parties under the *1980 Convention between Canada and the United States of America with respect to Taxes on Income and on Capital (with Exchange of Notes)*, including any amendments or any successor convention. Articles XXV and XXVI of the Convention shall govern exclusively issues or matters involving the *Income Tax Act* of Canada or the *Internal Revenue Code* of the United States of America.

Article 2002: Balance of Payments

Notwithstanding any other provision of this Agreement, either Party may:

- a) apply trade restrictions in accordance with Article XII of the *General Agreement on Tariffs and Trade*, including the Declaration on Trade Measures for Balance-of-Payments Purposes adopted by the GATT Contracting Parties 28 November 1979; or
- b) apply restrictions to persons of the other Party on:
 - i) the making of payments and transfers for current international transactions in conformity with Article VIII of the *Articles of Agreement of the International Monetary Fund*, or

- ii) international capital movements in accordance with Article 7, paragraphs (c) through (e), of the *1961 OECD Code of Liberalization of Capital Movements*,

provided that such restrictions do not constitute a means of arbitrary or unjustifiable discrimination between persons of the Parties or a disguised restriction on the benefits accorded to persons or goods under this Agreement.

Article 2003: National Security

Subject to Articles 907 and 1308, nothing in this Agreement shall be construed:

- a) to require any Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;
- b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests,
 - i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment,
 - ii) taken in time of war or other emergency in international relations, or
 - iii) relating to the implementation of national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2004: Intellectual Property

The Parties shall cooperate in the Uruguay Round of multilateral trade negotiations and in other international forums to improve protection of intellectual property.

Article 2005: Cultural Industries

1. Cultural industries are exempt from the provisions of this Agreement, except as specifically provided in Article 401 (Tariff Elimination), paragraph 4 of Article 1607 (divestiture of an indirect acquisition) and Articles 2006 and 2007 of this Chapter.
2. Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1.

Article 2006: Retransmission Rights

1. Each Party's copyright law shall provide a copyright holder of the other Party with a right of equitable and non-discriminatory remuneration for any retransmission to the public of the copyright holder's program where the original transmission of the program is carried in distant signals intended for free, over-the-air reception by the general public. Each Party may determine the conditions under which the right shall be exercised. For Canada, the date on which a remuneration system shall be in place, and from which remuneration shall accrue, shall be twelve months after the amendment of Canada's *Copyright Act* implementing Canada's obligations under this paragraph, and in any case no later than January 1, 1990.
2. Each Party's copyright law shall provide that:
 - a) retransmission to the public of program signals not intended in the original transmission for free, over-the-air reception by the general public shall be permitted only with the authorization of the holder of copyright in the program; and
 - b) where the original transmission of the program is carried in signals intended for free, over-the-air reception by the general public, willful retransmission in altered form or non-

simultaneous retransmission of signals carrying a copyright holder's program shall be permitted only with the authorization of the holder of copyright in the program.

3. Nothing in subparagraph 2(b) shall be construed to prevent a Party from:

- a) maintaining those measures in effect on October 4, 1987 that
 - i) require cable systems to substitute a higher priority or non-distant signal broadcast by a television station for a simultaneous lower priority or distant signal when the lower priority or distant signal carries programming substantially identical to the higher priority or non-distant signal,
 - ii) prohibit the retransmission of a distant signal by a cable system where
 - A) broadcast of the program is blacked out in the local market, or
 - B) the cable system distributes a network-carried program broadcast by a local network-affiliated television station,
 - iii) prohibit the retransmission of certain programming content, such as abusive and obscene material, alcoholic beverages or other prohibited products, provided that these measures are applied on a non-discriminatory basis and that the program or advertisement in which the programming content appears is deleted in its entirety,
 - iv) prohibit the retransmission of certain programs, advertisements or announcements during an election or referendum,
 - v) authorize the preemption of programs at the request of a Party for urgent and important non-commercial communications,

- vi) require a cable system, whose licence as of October 4, 1987 contained an invocable condition requiring the system to delete commercial materials and substitute therefor non-commercial materials, to implement such a condition; provided that with respect to those cable systems that were not implementing such licensing conditions as of that date, such conditions of licence shall be eliminated upon licence renewal, or
 - vii) permit non-simultaneous retransmissions in remotely-located areas where simultaneous reception and retransmission are impractical; or
- b) introducing measures, including measures such as those specified in subparagraphs (a)(i) and (a)(ii)(B), to enable the local licensee of the copyrighted program to exploit fully the commercial value of its licence.

4. Immediately following implementation of the obligations in paragraph 1, the Parties shall establish a joint advisory committee comprised of government and private sector experts to review outstanding issues related to retransmission rights in both countries to make recommendations to the Parties within twelve months.

Article 2007: Print-in-Canada Requirement

Canada shall repeal section 19(5)(a)(i)(A) and (B) and section 19(5)(a)(ii)(A) and (B) of the *Income Tax Act*, which define a Canadian issue of a newspaper or a periodical for purposes of deduction from income of expenses of a taxpayer for advertising space, as one that is printed or typeset in Canada.

Article 2008: Plywood Standards

If the panel of experts referred to in the exchange of letters between the Parties of January 2, 1988 does not agree with the findings or evaluation of the Canada Mortgage and Housing Corporation (CMHC) or any successor regarding the use of C-D grade plywood in housing financed by CMHC, or if the panel has not

completed its review by the date of entry into force of this Agreement, the United States may delay its tariff concessions on softwood plywood (4412.19.40 and 4412.99.40 in its Schedule in Annex 401.2) and waferboard, oriented strand board and particle-board of all species (4410.10.00), pending agreement by the Parties that the issues have been resolved satisfactorily. Should the United States of America delay implementation of these tariff concessions, Canada may delay implementation of its concessions on tariff items 4412.19.90, 4410.10.10 and 4410.10.91 in its Schedule in Annex 401.2.

Article 2009: Softwood Lumber

The Parties agree that this Agreement does not impair or prejudice the exercise of any rights or enforcement measures arising out of the Memorandum of Understanding on Softwood Lumber of December 30, 1986.

Article 2010: Monopolies

1. Subject to Article 2011, nothing in this Agreement shall prevent a Party from maintaining or designating a monopoly.
2. Prior to designating a monopoly, and where the designation may affect interests of persons of the other Party, a Party shall:
 - a) i) notify the other Party, and
 - ii) at the request of the other Party, engage in consultations prior to the designation; and
 - b) endeavour to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement.
3. Where a Party designates a monopoly, that Party shall ensure, whether through regulatory supervision, administrative control, or the application of other measures, that the monopoly shall not:

- a) in the monopolized market, engage in discrimination in its sales against persons or goods of the other Party, contrary to the principles of this Agreement; or
- b) in any other market, either directly or through its dealings with an affiliated enterprise, use its monopoly position to engage in anticompetitive practices that adversely affect a person of the other Party, whether through the discriminatory provision of the monopoly good or covered service, through cross-subsidization, or through predatory conduct.

Article 2011: Nullification and Impairment

1. If a Party considers that the application of any measure, whether or not such measure conflicts with the provisions of this Agreement, causes nullification or impairment of any benefit reasonably expected to accrue to that Party, directly or indirectly under the provisions of this Agreement, that Party may, with a view to the satisfactory resolution of the matter, invoke the consultation provisions of Article 1804 and, if it considers it appropriate, proceed to dispute settlement pursuant to Articles 1805 and 1807 or, with the consent of the other Party, proceed to arbitration pursuant to Article 1806.

2. The provisions of paragraph 1 shall not apply to Chapter Nineteen and Article 2005.

Article 2012: Definitions

For purposes of this Chapter:

cultural industry means an enterprise engaged in any of the following activities:

- a) the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing,
- b) the production, distribution, sale or exhibition of film or video recordings,
- c) the production, distribution, sale or exhibition of audio or video music recordings,
- d) the publication, distribution, or sale of music in print or machine readable form, or
- e) radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television and cable television broadcasting undertakings and all satellite programming and broadcast network services;

C-D grade plywood means C-D grade plywood with exterior glue as described in U.S. Product Standard PS-1 for Construction and Industrial Plywood that is marked by a grading organization such as the American Plywood Association;

designate means to establish, designate, or authorize, or to expand the scope of a monopoly franchise to cover an additional good or covered service;

monopoly means any entity, including any consortium, that, in any relevant market in the territory of a Party, is the sole provider of a good or a covered service; and

sale includes offer for sale and distribution.