



TRIUMVIRATE

Resolution on NAFTA'S CHAPTER XI

Adopted by the First Legislative Assembly of the Triumvirate
Ottawa, May 28, 2005

North American parliamentarians of the first Triumvirate assembly have convened upon the following:

STATEMENT OF MOTIVATION AND INTENT

This resolution has as primary objective to review Articles 1110 and 1114 of section A of Chapter XI in the North American Free Trade Agreement (NAFTA) with the goal of ensuring that NAFTA provides fair and competitive jurisdictions for direct foreign investment (DFI) while protecting public interest.

This resolution has, as its second objective, the creation of an appeal system for claims filed under Chapter XI, section B, of the North American Free-Trade Agreement (NAFTA). The proposed permanent appellate body is the North American judicial court, composed of judges from all three Parties to the NAFTA. It has jurisdiction to hear appeals from first instance Tribunals of the Chapter XI investor-state disputes.

The reviews made to Article 1110 are to ensure that Chapter XI can no longer challenge areas of public policy that are deemed to be for the public good. These changes reflect the principles that the rights of DFI should not outweigh the public good. Chapter XI still allows for challenges to be made in cases that fall outside of these areas.

Chapter I - Review to Article 1110

1. The TRIUMVIRAT parliament strongly recommends that both the first instance *ad hoc* tribunals as well as the new permanent **NAFTA COURT OF APPEAL FOR INVESTOR-STATE CLAIMS** interpret the term “measures tantamount” found in NAFTA’s Chapter XI in a much narrower scope by the judiciary to reduce spurious cases and to focus on cases related in two limited areas:
 - a. When a PARTY directly confiscates the investments of foreign investors without proper compensation.
 - b. When protectionist measures are created which favour domestic investors over foreign investors.

2. Governments can exempt policies from Chapter XI in cases of national importance, such as in times of national emergency, crisis, or other dire circumstances during that period of time and to a maximum of three years.

Chapter II - Review to Article 1114 - Implementation of an Environmental Compliance Policy

3. The PARTIES recognize that it is inappropriate to encourage investment by relaxing environmental measures and thus shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in their territories, of an investment.
4. Recognizing the right of the PARTIES to establish their own level of domestic environmental protection and their own sustainable development policies and priorities, and to adopt or modify their environmental laws and regulations, each PARTY shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.
5. Investors or the investment shall comply with environmental assessment screening criteria and assessment processes applicable to their proposed investments prior to their establishment, as required by the laws of the host state for such an investment. On all occasions, the investor or investment shall comply with the minimum standards on environmental impact assessment and screening established by the Parties.
6. Investors or the investment shall make the environmental impact assessments public and accessible to the host state where the investment is intended to be made prior to the completion of the host state measures prescribing the formalities for establishing an investment.
7. A list of independent organisations shall be submitted to the Investors by the PARTIES to proceed with the environmental impact assessment, unless the government has an existing internalised process for conducting environmental assessments; any environmental impact assessment produced by any of these organisations or the internalised government process shall be accepted as final.

Chapter III- Creation of a permanent Appellate Body for decisions rendered by a first instance Tribunal under NAFTA – Chapter XI investor – State Claims

Section 1 - General Clauses

8. The present statute creates The NAFTA COURT OF APPEAL FOR INVESTOR-STATE CLAIMS, a permanent court of appeals for suits filed under Chapter 11 of the NAFTA investor-state claims.
9. It is understood that in the body of the present statute, the NAFTA COURT OF APPEAL FOR INVESTOR-STATE CLAIMS will be referred to as the “COURT”.
10. It is understood that in the present statute, the Government of Canada, the Government of Mexico and the Government of the United States of America will be referred to collectively as the “PARTIES”.

Section 2 - Composition of the COURT

11. The COURT will be composed of seven (7) judges:
 - a. Two judges appointed by the Government of Canada;
 - b. Two judges appointed by the Government of Mexico;
 - c. Two judges appointed by the Government of the United States of America, and;
 - d. One Specialist Judge, appointed upon consensus by the six permanent judges to the case on an ad-hoc basis dependent on their expertise in the topic area of the specific case at hand. If consensus is not possible, then the six permanent judges will vote for the seventh ad hoc judge. In case of a tie in the vote, the chief justice will have the tie breaking vote.
12. The permanent judges will be appointed for a term of seven (7) years, during which they cannot be removed.
 - a. The seventh *ad hoc* judge will be appointed for the full duration of an appeal filed, until a decision is rendered.
13. A chief justice will be appointed on a rotational basis by the individual PARTIES and will serve as such for the duration of his first term only.
14. The permanent judges may be reappointed for one (1) extra term to a maximum of 14 years.
 - a. The seventh *ad hoc* judge may be reappointed to other filed appeals.
15. Candidates must have practiced law for a minimum of 10 years in their respective judicial systems to be eligible for appointment;
 - a. The seventh *ad hoc* judge requires an expertise of a minimum of ten (10) years of practice in the specific field of law related to the filed appeal.
16. Candidates must be citizens of their respective country, both at the time of appointment and throughout their term, to be eligible for appointment.

17. In case of serious illness, death or resignation, the government of the concerned PARTY shall appoint another judge to complete the term.
18. Other considerations for appointments are left to the discretion of the individual Parties.
 - a. Other considerations for the ad hoc judge will be left to the six (6) permanent judges.

Section 3 - Judicial Powers of the COURT

19. The COURT has jurisdiction to hear the appeal of any decision rendered in a suit filed under Chapter 11 of NAFTA, provided that:
 - a. A decision has been rendered by a first instance tribunal under the dispute rules set by the UNCITRAL or the ICSID;
 - b. The appeal is sought within one (1) year after the decision of the first instance tribunal was rendered, and;
 - c. The Parties make public the decision of the first instance tribunal.
20. Decisions of the COURT are final and not subject to further appeal.
21. The decision of the court is binding on both the PARTIES and the claimant; PARTIES must abide by the COURT's decision and uphold its decisions by: reversing, amending, or implementing appropriate legislation consistent with the COURT's decision.
22. The COURT's decisions shall serve as precedent and, where applicable, shall have a binding effect on first instance tribunals (stare decisis).
23. The COURT has no jurisdiction to hear appeals relating to claims filed under any other Chapter of the NAFTA or of any other treaty or commercial agreement.
24. The COURT will not receive retroactive cases but will be able to receive cases that are still pending in first instance tribunals, provided that the decisions in the first instance tribunals are not rendered before the creation of this COURT and that all the criteria for appeal of this resolution are respected.

Section 4 – Access to documents

25. Decisions rendered by the COURT shall be made public by the PARTIES, except:
 - a. Information found to be of a confidential commercial nature;
 - b. Privileged information that cannot be divulged because of one of the PARTY's national or local statutes;

c. Information that cannot be divulged by a PARTY as per the rules of arbitration as applied in the first instance.

Section 5 - Costs

26. The COURT's administrative costs shall be incurred by the Parties equally.
27. The judges' salaries will be borne by each Party according to a scale to be determined by each Party.
28. Claimants will bear additional costs that relate to each specific appeal if their appeal is dismissed.

Section 6 – Language

29. English, French and Spanish are the official languages of the COURT.
30. All decisions of the COURT shall be rendered in English, French and Spanish, all of which shall bear equal force of Law.
31. Simultaneous translation in all three official languages will be provided during all of the COURT's proceedings.

Section 7 – Location

32. It shall be the responsibility of the PARTIES to provide suitable location for the COURT to be heard; the location shall be determined on a case-by-case basis, with the location being within the domestic territory of the PARTY against which the claim is being made.

Section 8 – Administration

33. The COURT will determine its own administrative and procedural rules provided that they are not in violation of this document.
34. The COURT must present an annual report to the TRIUMVIRAT parliament on its hearings.





Résolution sur les corridors commerciaux

Adoptée par la première Assemblée législative du Triumvirat

Ottawa, le 28 mai 2005

Les parlementaires d'Amérique du Nord, rassemblés dans le cadre de la première assemblée du Triumvirat, conviennent de ce qui suit:

ÉNONCÉ DE MOTIVATION ET D'INTENTION

L'Accord de libre-échange nord-américain (ALENA) et plus particulièrement la suppression des barrières tarifaires au commerce des biens et des services a exacerbé les relations et échanges commerciaux entre le Canada, le Mexique et les États-unis. Cette augmentation a provoqué une montée en flèche du trafic routier, ferroviaire, portuaire et aéroportuaire, avec comme résultat des délais d'attente et des embouteillages importants, particulièrement aux postes frontières nord-américains. Ainsi, l'augmentation du volume des biens échangés dépasse aujourd'hui la capacité d'absorption de nos routes, ponts, chemins de fer et postes frontaliers.

Bien que cet engorgement des réseaux de transport découle de la signature de l'ALÉNA, celui-ci ne fournit pas de cadre politique, légal ou institutionnel qui permette de répondre aux besoins occasionnés par les échanges commerciaux accrus. Cette absence de considération pour les enjeux liés au transport vient aujourd'hui limiter les retombées commerciales pouvant résulter de l'ALÉNA.

C'est pourquoi il est essentiel de favoriser le développement de corridors commerciaux nord-américains, lesquels fonderont les bases d'un système de transport intégré en Amérique du Nord.

Le présent projet de résolution vise à maximiser le potentiel économique de l'Amérique du Nord par la création de la Commission nord-américaine pour les corridors commerciaux (CNACC), à diminuer l'engorgement aux postes frontières, à réduire le nombre de véhicule circulant sans chargement, à réduire le niveau de pollution et à permettre la mobilité des transporteurs accrédités au sein de l'ensemble du territoire nord-américain.

Ce projet créera des conseils nationaux (CN) et un conseil trilatéral qui régiront à partir de cette résolution les domaines de transports nord-américains. Les conseils nationaux et trilatéraux auront alors un pouvoir résiduel sur tout aspect qui n'est pas expressément indiqué dans cette résolution.

La Commission nord-américaine pour les corridors commerciaux visera à développer de meilleures conditions sociales et environnementales dans ses trois pays membres.

Chapitre 1 - Commission nord-américaine pour les corridors commerciaux (CNACC)

Section 1 – Mandat et structure

1. Est créée la Commission nord-américaine pour les corridors commerciaux (CNACC) dont le mandat consiste à gérer de manière optimale le développement des corridors commerciaux de l'Amérique du Nord selon les principes suivants :
 - a. Améliorer, moderniser et intégrer l'infrastructure de transport nord-américain;
 - b. Concilier les intérêts économiques liés au transport commercial avec les objectifs de sécurité;
 - c. Créer un cadre législatif harmonisé, équitable et sécuritaire en matière de transport.
2. La CNACC, en vue de planifier le développement des corridors commerciaux, verra à :
 - a. Recueillir et mettre à jour les informations sur la fréquence d'utilisation des corridors de transport actuels, l'origine, la destination, la quantité, le poids et la valeur des biens transportés;
 - b. Développer un plan d'action en matière de développement des corridors commerciaux tenant compte de liste des corridors commerciaux à « haute priorité »;
 - c. Créer et coordonner le travail des conseils de la CNACC, lesquels traiteront notamment de l'harmonisation des législations, de la protection de l'environnement et des postes frontaliers;
 - d. Mettre sur pied un programme de mobilité nord-américaine pour les entreprises de transport.
3. La CNACC sera composé de conseils nationaux (CN) de nature bureaucratique pour chaque pays membres; et ces pays membres auront une discrétion quand à la composition de leurs conseils.
4. Ces conseils nationaux formeront par la suite un conseil trilatéral. Ce conseil trilatéral sera formé de parts égales par des membres des conseils nationaux. La sélection des membres du conseil trilatéral sera choisit par chaque conseil national des trois pays membres.

- 5- Des liaisons gouvernementales assureront un lien entre les départements de sécurité intérieure, de commerce international, de transport et des affaires étrangères de chaque État fédéré.
- 6- La CNACC et ses conseils se réunissent aussi souvent que nécessaire et au moins une fois par année.
- 7- La CNACC et ses conseils adoptent ses recommandations à la majorité de ses Membres.
- 8- La CNACC et ses conseils rendront publiques les banques de données qu'ils constituent, les études qu'ils réalisent et qu'ils commandent et les résolutions qu'ils adoptent.

Chapitre 2 - Programme de mobilité des camionneurs

- 9- La CNACC développera les modalités de fonctionnement d'un programme de mobilité des camionneurs lequel permettra aux entreprises de camionnage nord-américaines d'être accréditées par la CNACC comme « Transporteur nord-américain certifié ». Seules les entreprises respectant les normes de sécurité, d'environnement et du droit de travail convenues par les Parties pourront être accréditées. Ceci mènera à la création de :
 - a) voies rapides commerciales (fast-lane) pour faciliter le transport de marchandise qui sera accrédité par la CNACC en vue d'améliorer l'efficacité du transport frontalier;
 - b) 15 nouveaux postes douaniers (fast-lane) aux frontières mexicaines-américaines qui seront redistribués en trois corridors (est, central et ouest) qui traverseront l'Amérique du Nord.
- 10- La CNACC donnera l'accréditation à tous transporteurs qui va atteindre les critères et exigences décidées par chaque conseil national sur les aspects environnementaux, de droit du travail et de sécurité. Cette accréditation donnera le droit aux transporteurs de circuler librement sur tout le territoire géré, respectivement, par chaque CN.
- 11- Pour les transporteurs qui ne se qualifient pas pour l'accréditation visée par l'article précédent, la CNACC donnera une accréditation réduite aux transporteurs qui atteindront des exigences désignées par le conseil trilatéral; cette accréditation limitera ces transporteurs aux corridors commerciaux.
- 12- Les critères et exigences pour les deux types d'accréditation seront publiés; sauf pour tout renseignement qui pourrait être une menace à la sécurité nationale des États membres.

Chapitre 3 - Financement de la CNACC

- 13- La CNACC sera financée par les trois membres à part égale avec des dispositions pour des exceptions spéciales pour le Mexique qui seront révisées à tous les cinq ans.
- 14- Des frais tarifaires seront aussi imposés sur la marchandise pour aider au financement.
- 15- Nous encourageons le développement de partenariat public-privé (PPP) pour la formation de tout projet de la CNACC.





TRIUMVIRATE

Resolution on Immigration

Adopted by the First Legislative Assembly of the Triumvirate
Ottawa, May 28, 2005

North American parliamentarians of the first Triumvirate assembly have convened upon the following:

Chapter 1 – Creation of the Commission on Internal Migration in North America

1. A commission on internal migration in North America (CIMNA) is created and has as its main mandate to supervise and regulate internal migratory flows in Canada, the United States and Mexico, keeping in mind the following objectives:

- a) Facilitate and increase legal migratory flows within North America;
 - b) CIMNA recognizes and establishes common goals to ensure safety and security of North America, including the eventual harmonization of migratory policies within North America;
 - c) Respect the basic needs and rights of immigrants;
 - d) Respect the national sovereignty of Canada, the United States and Mexico regarding immigration.
2. a) CIMNA is composed of the immigration, Homeland Security, foreign affairs and international aid ministers or three equivalent officials from Canada, the United States and Mexico.
- b) The chair of CIMNA shall rotate every six month between the three countries in the following order: United States of America, Mexico, Canada, with the longest-serving minister from that particular country assuming the position.
3. CIMNA adopts its recommendations unanimously.
4. CIMNA is accountable to the governments of Canada, the United States and Mexico.
5. CIMNA may also make recommendations concerning the migratory policies of the United States, Canada and Mexico in regards to migrants from non-North American countries.

6. CIMNA shall have the power to create any committees deemed necessary to achieve its mandate.

Chapter 2 – CIMNA Responsibilities

Section 1 – North American Visas

7. A North American work and study visa is created. This visa is issued and administered by CIMNA.
8. The requirements to obtain a North American work or study visa are the following:
 - a) Be a Canadian, American or Mexican citizen;
 - b) Not pose a security threat to Canada, the United States and Mexico;
 - c) Respond to the needs and respect the qualifications established by the provinces and states.
9. Visas are granted in order of priority to:
 - a) Current holders of a work or study visa in Canada, the United States or Mexico who are citizens of one of the these three countries;
 - b) Illegal immigrants living or working in Canada, the United States or Mexico who are citizens of one of the these three countries ranked according to a system of points established by CIMNA to reflect the interests of the states, provinces and countries;
 - c) Other citizens of the three countries who request a North American visa ranked according to a unique system of points established by CIMNA.

Visas must be issued to representatives of all three of the above categories of potential applicants.

10. The number of North American visa issued by CIMNA should reflect the labor market needs for new working force by each states, provinces and countries.
11. CIMNA shall help and encourage Mexico in promoting Canada as a destination for Mexican workers.
12. Visas are issued for a duration of five years and are renewable based on the initial conditions of issue.
13. Work and study visas use biometric technology and all information about the holder which CIMNA deems necessary.

Section 2 – Common Database

14. CIMNA is committed to establishing a common and confidential database for Canada, the United States and Mexico containing all the information in visas.
15. CIMNA is responsible for managing this information and should ensure that every individual share access to their own personal information.
16. Based on information provided by agencies in Canada, the United States and Mexico, CIMNA issues an attestation confirming that the applicant does not pose a security threat.

Chapter 3 – Advisory Committees on Immigration Policies and Infrastructure

Section 1 – Committee on Research and Advising on North America Internal Migration (CRANAIM)

17. This commission must work on the evolution of the North American labor market and, specifically, on the links between incentives to return internal migration and economic development in North America.

Section 2 – Committee on Border Infrastructure (CBI)

18. The Committee on Border Infrastructure (CBI) is created by CIMNA and composed of three senior officials appointed respectively by the three members of CIMNA.
19. The CBI is responsible for studying:
 - a) Possible customs infrastructure measures in North America to facilitate the entry of immigrants in possession of a North American visa and prevent entry to illegal individuals;
 - b) The need to create a relief fund for Mexico to be used to acquire border technology and infrastructure required by CIMNA.
20. The CBI provides its conclusions and recommendations to CIMNA.

Chapter 4 – Financing CIMNA

21. A common fund must be established for financing CIMNA.
22. CIMNA's fund is accountable to the government of Canada, the United States and Mexico.

23. For determining the fees paid by each country, the following criteria must be considered:

- a) Population
- b) GNP
- c) Percentage of the total immigration flows in the region.





TRIUMVIRATE

Resolution on Energy

Adopted by the First Legislative Assembly of the Triumvirate
Ottawa, May 28, 2005

North American parliamentarians of the first Triumvirate assembly have convened upon the following:

STATEMENT OF MOTIVATION AND INTENT

The production of Energy is vital to both the people of North America and their economies. In the future, the need for energy is expected to grow. However, the production of energy comes with an environmental cost. This impact on the environment can be of different degrees, depending on what type of energy is produced and on how it is produced.

Power is the one subject that North American States are concentrating their efforts on in this Resolution. The three countries and their federated states have agreed to recognize the impact of electricity production on North American environment. Therefore, it is important, from now on, to gather our efforts in reducing those impacts.

Such an effort can only be made through an integrated vision of economical development. Energy should be produced in a way that respects both environmental standards and economic growth. Two relevant issues will be present in this document in order to secure the viability of it: first, knowing that the distribution of energy sources as well as the demand of each province or state are heterogeneous, we will not homogenize North American energy systems but instead, we will foster the best use of energy. Secondly, there is an economic gap between the States of the North American countries. This will always be taken into account through out the elaboration of these resolutions to make sure the three countries are in fact converging and not increasing their economic differences.

Since the concept of renewable or green energy has not come up to a precise definition yet by scientists, the three countries however agree on the following priorities, classifying the modes of production in two categories. The first one, the non traditional energy, which is considered better for the environment; the second one, the traditional energy, which is more commonly used but considered to cause more damage to the environment.

Non traditional energies:

1. Biomass
2. Geothermal
3. Hydro-electricity
4. Solar
5. Tidal
6. Wind

Traditional energies:

7. Coal
8. Natural gas
9. Nuclear
10. Oil

Given the integration of the North American market, the coordinated efforts of the three countries are essential in order to achieve sustainable development in the region. This resolution aims to encourage North American states to work towards producing energy in a safer, more diversified, efficient and environmentally friendly manner for the short and the long term.

Although this resolution does not encourage the further usage of nuclear energy, it does recognize that when properly managed, it represents a safe and inexpensive source of energy.

Chapter 1 – Resolution regarding government support for non traditional and traditional energy sources

1. Representatives of the three North American countries agree to adopt a coordinated plan to reduce government subsidies and assistance given to the traditional forms of energy. The three countries agree to present a plan of subsidy reductions to the North American Advisory Committee on Energy (NAACE) development within a year with the objective of balancing the subsidies between traditional and non traditional forms of energy, regarding production structure and energy consumption of each country.
2. The States of North America concur to create the North American Advisory Committee on Energy (NAACE) which will address academic and technological exchange.
3. NAACE will have the faculty to conduct studies which will determine the criteria defining an energy and environmental priority zone. The result of this research will be submitted to the governments of the member states in order for these members to identify pollution reduction measures in those zones.

Chapter 2 – Resolution regarding North American Environmental and Energy Priority Areas

4. According to article 1, the objectives of the North American Environmental and Energy Priority Areas (NAEEPA) include energy savings programs, efficient use of current sources and the promotion of renewable energy sources, which would allow the achievement of a sustainable development in North America.
5. The NAACE would have the responsibility to create the definition criteria of NAEEPA, taking into account the expertise of its members and of the North America governments.

Chapter 3 - The North American Advisory Committee on Energy (NAACE)

8. NAACE will investigate, taking in account the economical impact, the following areas:
 - a. Development of environmentally friendly technology;
 - b. Use of non traditional energy;
 - c. Increase in energy efficiency;
 - d. Ways to implement progressive changes that favor the use of non traditional energy to achieve the goals stated in Article 1.
9. During the following six month period this Energy Commission will get together to discuss energy integration issues.
10. In order to insure the economic viability of this resolution in North America, the NAACE will meet to create a fund through NAEEPA, which will promote development.

