VIII AMERICAS BUSINESS FORUM of the FTAA

INVESTMENT

SUMMARY OF CLADEC AND ACCA RECOMMENDATIONS

On behalf of the Express Delivery Services sector of the Americas, CLADEC and ACCA offer the following recommendations to the Americas Business Forum concerning the FTAA Draft Chapter on Investment:

The Chapter on Investment should include investment protections consistent with the rules provided in the Chapter on Services.

Article 1.4 should confirm that Parties may prohibit investment in certain economic activities consistent with commitments undertaken in the Chapter on Services, including national treatment and most-favored national disciplines.

Articles 1.5 and 1.6 regarding investment related to government functions should confirm that the Chapter on Investment fully applies to such investments. Negotiators should ensure that provisions on government functions concerning investment not conflict with parallel provisions in the Chapter on Services.

Article 2.1 should confirm that the public or private nature of a service supplier shall not affect their status as like services suppliers or like services for the purposes of national treatment rules.

The suggestion in Article 2.3 that prudential measures might be applied differently and favorably to domestic companies in smaller economies does not seem justifiable.

The requirements set out in Article 4.3 to clarify the application of the Annexes should be made mandatory instead of aspirational.

Disciplines on performance requirements, such as those set out in Article 7, should be included in the Chapter on Investment. This is particularly important for services sectors where no WTO rules on performance requirements presently exist.

Article 7.3 should not include provisions that allow Parties to force investors to supply specified services as a condition of investment, except as generally required under the Parties' domestic law.

Article 7.7 should ensure that agreements between private parties regarding performance requirements are free from state influence.

The definition of Investor and Investment should be harmonized with parallel provisions in the Chapter on Services by applying the “substantial economic activity” test throughout the texts.