Text	Descriptive Summary of Text	ENERGY comments – internal	ENERGY comments for MIT/GAC
Energy – Consolidated Text with Mexico	Proposed text from Mexico and Canada to update existing NAFTA Chapter 6 on energy. Proposal expands scope of chapter's coverage from oil, gas and uranium to renewables; would ensure non-discriminatory access to transmission networks (oil, gas, electricity) in most cases; and cooperation on standards and technical regulations, including energy efficiency and renewables standards; and increase cooperation on energy, including positions in international fora, exchange of market data, promoting R&D and other general best practices. November 10, 2018 version incorporates Canada's position as previously outlined in the Canada "non-paper" that provided 7 policy statements for provincial and territorial reaction.	Article XX-3: (bottom of page 2) Canada has proposed new text which appears to put additional obligations on the parties. Additional discussions with MIT are required to understand how this language could impact ENERGY. Article XX-4: This provision deals with third party non-discriminatory access to energy transport infrastructure and basically requires each party to ensure that owners or operators of transmission networks is granted access to the energy infrastructure for the transport of gas, electricity and hydrocarbons by-products of any entity of the parties within a reasonable period of time and notwithstanding a party may maintain a limited list of derogations from the right to third party access to fulfil a legitimate policy objective. Each party shall previously publish the terms, conditions and tariffs for the access and use of this infrastructure. No other specific language for non-discriminatory access is given. Ontario's Electricity Act (s.26.1) includes a provision that gives market participants non-discriminatory access to its transmission and distribution systems. However, ENERGY recommends asking MIT/GAC to continue to monitor the development of the language on	Article XX-3: Can MIT/GAC provide additional information about how this provision could apply and who would be deemed an energy regulatory body. It is difficult to understand the concepts in this provisions such as what could be 'an energy regulatory measure'; 'when a party requires an authorization for the participation in energy-related activities in its territory'; or, 'each party can require an entity which has been granted an authorization to pay a financial contribution'. We need more information to assess how provision could impact ENERGY. The new text that Canada has proposed in Article XX-3(3) and (4) (bottom of page 2 and top of page 3) seems to require a Party who requires an authorization to publish specific information. ENERGY requires more information about what is meant by the concept of 'authorization' to assess the impact on ENERGY – can GAC/MIT clarify?. The new text Canada has proposed in Article XX-3(6) (top of page 3) seems to require a Party to pay an additional financial contribution or contribution in kind. It would be helpful to understand what levels of financial contributions are being considered. If authorization means the time when an applicant receives their "final" permit how would this point in time be determined? Would it be different for every

	non-discriminatory access, proposals for specific detailed language that apply to all jurisdictions could be problematic. Canada has added a new Article XX-04 (4) (top of page 4) which seems to require relevant domestic administrative bodies (possibility the OEB or IESO) to provide treatment to electricity imported from US or Mexico that is no less favourable than the best treatment afforded to electricity from Ontario to Canada. ENERGY has no immediate concerns with this provision. Ontario currently uses emissions factors to determine the carbon intensity of US electricity imports under Cap and Trade. Traders are required to procure and retire emissions allowances for imported electricity. The new Canadian proposal in Article XX-06(2) (middle of Page 4) suggests parties endeavor to cooperate on energy infrastructure protection including grid security and resilience and cybersecurity as well as system modernization and optimization. Given that this could have impacts on IESO market renewal, however minimal, ENERGY will continue to monitor this provision closely. Canadian proposal in Article XX: National Security (middle of page 6). Provision highlights that no party may put in place a measure (policy or program for example)	authorization? Article XX-4: Can MIT/GAC continue to monitor the development of the language on non-discriminatory access? Proposals for specific detailed language that apply to all jurisdictions could be problematic. Request additional information on new Article XX-04 (4) (top of page 4) proposed by Canada and what the new provision is intended to achieve. Article XX-5: This article contemplates establishing a regulatory body that is separate and not accountable to operators or entities having access to energy transport infrastructure to resolve disputes. Who would be responsible for setting up this body? Would it be a provincial or federal body? Could an existing ENERGY body or agency be assigned with this work? Article XX-6 – This appears to provide for more flexible harmonization provisions with respect to Energy Efficiency Standards than the Energy Efficiency Chapter. How will the two be reconciled? See also comments on Energy Efficiency Chapter Article XX-07 – This article appears to promote cooperation between regulatory and/or standardization bodies in the areas of energy efficiency and sustainable energy with a view to contributing to sustainable energy and climate change policy. Can MIT/GAC clarify what standard that the parties would harmonize to, or

	which restricts imports of energy from or exports to another Party unless for specific crucial national security issues. Does this raise any policy concerns? New Canadian proposal in Article XX-11: Definitions to define renewable energy. New Canadian proposal in Article XX-11: Definitions of renewable energy: Renewable energy means energy that is derived from natural processes, for example sunlight and wind, that are replenished at a higher rate than they are consumed. Solar, wind, geothermal, hydro, and biomass are common sources of renewable energy." Electricity Act definition: Renewable energy source" means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source;" NAFTA definition is not exhaustive. REFO sees no contradiction between NAFTA text	confirm that US DOE standards would be adopted as the standard, and the proposed timelines for this standard? ENERGY would flag for MIT/GAC that Ontario's standards are updated to align with US DOE standards, but that US DOE standards also change with a degree of frequency and timelines for harmonization. Article XX-9 – Non-application of dispute settlement – does this mean that if there are disagreements on how the chapter is being implemented they would not be subject to the dispute settlement chapter? If so, how would disputes be resolved? Article XX-10 – Relation to Other Agreements (top of page 6) – what multilateral agreements governing the energy sector are being specifically considered by this provision? Article XX – Committee on Energy (middle of page 6) is a new proposal from Canada. Who would be a representative on this committee? See also comments below relating to an Energy Committee as outlined in Canada's Energy non-paper.

		and Ontario legislation.	
Energy – Non-paper from Canada	Two-page paper outlining 7 issues that Canada seeks to explore in a dedicated energy discussion with NAFTA Parties, including: 1. Cross-border infrastructure 2. Energy diversification 3. Security of energy infrastructure 4. Import and export processes for energy products 5. Origin documentation requirements 6. Regulatory coherence 7. Establishment of a Committee on Energy	Overall, the issues cited in the Canada non-paper seem to be fairly high level. In the opinion of ENERGY staff, concerns are more likely to arise with how these principles are articulated in NAFTA. It would be helpful to have some additional background on each of the concepts specifically and info on how Canada proposes to implement them; ENERGY will continue to be very engaged on this chapter going forward.	Can MIT/GAC share additional background on each of the concepts outlined in this paper, and whether Canada proposes to implement all of them? Additional responses and feedback from Ontario ENERGY below: Issue 1 – Rules related to NAFTA commitments about providing more open access to shared infrastructure must be considered in light of reliability concerns and commitments (e.g. FERC) as well as the physical reality of the system itself. ENERGY recommends that Canada may wish to reserve authority to develop, implement, expand or improve its own security measures for its bulk power system and associated connected distribution systems. Issue 2 – Given the US commitment to coal, ENERGY would suggest that Canada encourage the US to meet highest “clean coal” standards as a first step towards a cleaner energy supply mix across North America, as appropriate. Issue 4 – ENERGY recommends that this section be expanded to explicitly reference electricity-related issues such as any challenges

			arising out of transacting over the interties, common intertie pricing and wheeling. Issue 6 – A working group of Canadian provincial officials/regulators meets regularly with NERC and FERC to discuss regulatory reform and reliability/cyber security standards. Mexican officials sometimes attend. ENERGY is interested in additional thoughts/details from MIT/GAC on enhanced regulatory consistency in the sector – is this being discussed at the technical table or is it more of a cooperative statement that GAC is proposing? Issue 7 – ENERGY does not immediately oppose the creation of a committee on energy to enhance cooperation and collaboration but would require additional detail about this proposed body and its relationship with other organizations if Canada pursues its creation.
U.S. proposal – Energy Efficiency	Addresses regulating bodies and regulatory cooperation on energy performance standards and related test procedures.	Article X.3: Currently Ontario is committed to supporting harmonization of efficiency standards across Canada and with leading North American jurisdictions, such as the U.S. DOE. However, we are not yet fully harmonized. We note that the Chapter would outline a specific timeline that the Parties would need work towards achieving full harmonization by with respect to test procedures and EPSs. This timeline will be important for our Ministry and once the timeline is known the Ministry should be kept	Most Ontario standards are aligned with leading North American jurisdictions (principally NRCan and the US DOE). The 2017 LTEP reaffirmed Ontario's commitment to expand efficiency standards for products and appliances and work with other provinces and the federal government to harmonize and raise the bar for energy and water efficiency standards. ENERGY staff regularly meet with NRCan and provincial counterparts to discuss standards and harmonization and work towards alignment. Ontario typically updates efficiency standards

	apprised of it to ensure that harmonization is achieved, where appropriate. (the Ontario Energy Efficiency Regulation is updated every one to two years). Also, it does not specify a specific standard that Parties will harmonize with and this seems to be left open to the parties. We assume it would be U.S. DOE given the progress already made by Canada to harmonize with U.S. DOE, but if not, this may have implications for our Ministry given that we are mostly harmonized with U.S. DOE.	regulation annually or more, adding or updating 10-20 products per year, most of which are harmonized with either DOE, NRCan, or both. Ontario often uses rolling incorporation with DOE standards, to ensure that the Ontario standard is automatically aligned with the DOE standard whenever the US standard is changed. Some manufacturers have concerns related to inability to coordinate implementation and compliance dates for new and updated efficiency standards across jurisdictions. They support harmonizing compliance dates with other jurisdictions, particularly NRCan. Ontario endeavors to harmonize, wherever possible, with other jurisdictions to minimize disruption to the industry. However, it is difficult to fully align the introduction of new standards due to unforeseen delays in processing of regulatory amendments by other jurisdictionsThe following is an example of how Ontario harmonizes standards and compliance dates with NRCan: in 2017, ENERGY proposed increasing efficiency requirements for liquid filled distribution transformers, to align with the DOE standard. NRCan proposed the same approach in one of their upcoming amendments. However, in response to industry concerns, and in consultation with NRCan, ENERGY decided to postpone this change for two years at which time NRCan will have updated its own standards for these products to ensure that both the standards and the compliance dates will be harmonized between Ontario and NRCan

			regulations at the time of standards implementation. Article X.3: Can MIT/GAC clarify what standard that the parties would harmonize to, or confirm that US DOE standards would be adopted as the standard, and the proposed timelines for this standard? ENERGY would flag for MIT/GAC that Ontario's standards are updated to align with US DOE standards, but that US DOE standards also change with a degree of frequency and timelines for harmonization.
Investment, Section A	Investment chapter was expected to be updated to reflect that Mexico has liberalized its energy sector; the current draft includes a section on expropriation/nationalization but the draft otherwise makes no specific reference to energy. As drafted, the investment chapter would apply to sub-national governments.	Both Windstream and Mesa argued they were unfairly treated under the National Treatment provision of Ch 11 of NAFTA therefore it is important we understand if the thresholds or requirements under this provision are changing. Further, Mesa argued that Ontario imposed a prohibited performance required because the domestic content requirements in the FIT program were a precondition to obtain approval of a FIT contract. Therefore it is important we understand if the thresholds or requirements under this provision are changing. Also, Windstream argued that Ontario expropriated their FIT contract under Ch. 11 of NAFTA. Therefore it is important we understand if the thresholds or requirements under this provision are changing.	Definitions • MX: Claimant – this definition seems particularly complex. Consider streamlining • CA: Confidential or CA/MX: protected information ---- concept in MX/US definition that specifies that confidential means "…otherwise protected from disclosure under a Party's law…" is preferred. CA proposed definition seems unnecessarily narrower in scope. Article X-XX: Market Access (from version shared mid-November) • Can MIT/GAC provide additional information on this new CA addition to the chapter, and why added to Investment Section A? Article CA X-03/MX XX:XX/ US 11.4 – National Treatment:

- Why is Canada proposing to insert 'maintenance, use, enjoyment' into the national treatment provision? Would the proposed changes result in stricter obligations for Ontario?
- What is the purpose of highlighting legitimate public policy/welfare objectives? Does it change the NT (national treatment) obligations for Ontario?

Article CA X-04; MX: XX-XX; US 11.5 Most-Favored Nation

- Why is Canada proposing to insert 'maintenance, use, enjoyment' into the most favored nation provision? Would the proposed changes result in stricter obligations for Ontario?
- Re (CA3) – what is the purpose of highlighting legitimate public policy/welfare objectives? Does it change the MFN obligations for Ontario?
- Re (CA4) – This suggests that MFN isn't subject to dispute settlement provisions? So how would the parties reconcile differences in how this provision is being implemented?

Article CA X-05; MX: XX-XX; US 11.6 Minimum Standard of Treatment

- Re(2) – Canada's suggested language goes into detail about what constitutes a breach of customary international law. Is this simply an exercise in setting out the CIL

			common law obligations into the text? Would the proposed changes result in stricter obligations for Ontario? • Re(3) – how often will the parties review the obligation in para 2? Is it up to the NAFTA free trade commission to accept or reject recommendations? Article CA X-06;MX XX-XX; US 11.10 Performance Requirements • Re (1) – Canada, US and Mexico have all made a number of insertions to this article. Would the proposed changes result in stricter obligations for Ontario? • Question for MIT/GAC legal - what are the implications of including the wording "maintenance, use, enjoyment"? Article CA: X-10; MX: XX-XX; US: 11.8 Expropriation and Compensation • Re (1) – Canada, US and Mexico have all made a number of insertions and deletions to this article. Would the proposed changes result in stricter obligations for Ontario?
U.S. proposal – Investment, Section B (settlement of disputes between a party and an investor of another	Section B relates to Investor State Dispute Settlement. It addresses several procedural aspects, including submission of claims for and consent to arbitration, conduct of the arbitration, governing law, and in annexes, expropriation and	Article 11.19 to 11.27: Describes processes in greater specificity (these may have been described in other documents previously). There may be implications of more specificity in process with respect to the various phases described of an arbitration.	Concepts from old Article 1115 – Concepts such as equal treatment, international reciprocity, and due process before an independent tribunal are not re-iterated in the new proposed NAFTA Chapter. Is there a reason for this? Article 11.16: What is meant by "good offices"?

party)	legacy investments (including monopolies and state-owned enterprises).	Article 11.18 to 11.19: Stipulate that a claim is deemed to have been submitted when Secretary-General of ICSID or other arbitral institution and that parties must consent to arbitration in writing; rules regarding termination of consent. Article 11.19.5: Seems to have been inserted to allow a disputing investor to continue a domestic claim at the same time as an arbitration if the domestic claim is for the "sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration". This could put a significant burden on responding governments. Seems to us that a disputing investor could argue a lot under 'preserving their rights and interests during the 'arbitration'. Article 11.20.3: timeline for establishing tribunal shortened to 75 days from 90 days. Note for ENERGY policy: Article 11.20: when comparing to former Article 1124 note that the notice period for a tribunal not being constituted and asking the Secretary-General to appoint has been shortened from 90 to 75 days. Question for MIT/GAC: request for more information on this timing change and how it would impact responding governments time to prepare a defence. Article 11.21.3: Tribunal may accept amicus	Assuming it is a form of alternative dispute resolution similar to conciliation or mediation, how would the conciliator or neutral third party be selected? Article 11.17: It appears that under the new provision an Investor can no longer bring a claim on its own behalf for a violation of various articles that were previously covered (e.g. Performance requirement, Minimum standard of treatment and expropriation provisions). This appears to be narrower than the Previous Article 1116. If we are reading correctly essentially this means that the provisions that Mesa and Windstream argued would no longer be subject to investor-state dispute. The only one that is missing is the old Article 1104 Standard of Treatment. Can MIT/GAC confirm? Article 11.17: What is meant by "juridical person that the claimant owns or controls directly or indirectly"? Article 11.17: Previously, article 1119 only required a disputing investor to specify among other things "the issues and the factual basis for the claim". The new NAFTA 11.17.2(c) language requests "the legal and factual basis for each claim;" What is the intent of this modification? Will it result in additional information being submitted as part of a claim? Article 11.17: language seems similar to the old

	curiae briefs. Note for ENERGY policy: Language in this provision allows tribunal some leeway in how they deal with amicus briefs (ie. The tribunal can set page limits and deadlines). Question for MIT – the tribunal may accept and consider written amicus curiae submissions – so it is within the tribunal's authority to reject the submission? How do these submissions differ from the non-disputing Party oral and written submissions referred to in Article 11.21.2 Article 11.21.4: Without prejudice to a tribunal's authority to address other objections as a preliminary questions, such as objection that dispute is not w/in competence of tribunal, including jurisdiction, tribunal shall address and decide any objection by respondent that as a matter of law the submitted claim is not a claim for which an award may be made or that the claim is manifestly without legal merit. Process described, including timelines. Tribunal can award costs and attorney fees to prevailing party.Inclusion of this type of provision would seem to be a positive for ENERGY. It would potentially allow us to force the tribunal to consider jurisdictional issues at the beginning of an arbitration and if we win on jurisdictional issues, the case could be terminated.	article 1120. Given that Canada and Mesa had disagreements with Mesa on how to interpret this provision (related to whether six month elapsed from all or one of events giving rise to claim) ENERGY would flag that it may be helpful to see if Canada is willing to negotiate further clarity into this provision. Article 11.17: Introduces option of using other arbitral institution or arbitral rules, in addition to ICSID and UNICTRAL, if claimant and respondent agree. It is difficult to assess the impact on ENERGY without additional information. Can MIT/GAC provide additional information regarding potential arbitral institutions or arbitral rules which could put Ontario at a disadvantage e.g. institutions with poor reputation; institutions with more ambiguity in their rules. Can MIT/GAC clarify that once arbitral institution or rules is chosen it would remain in place for the entire dispute? Articles 11.18 -11.19: It would be helpful to understand the intent of these more detailed rules on consent and why there are necessary. Article 11.19.5: Can MIT/GAC provide additional information on why this provision is required? Article 11.20.3: Can MIT/GAC provide more information on these timing changes and how the change is expected to impact responding governments time to prepare a defence?

		Annex 11-A –sets out a description of the parties understanding of what constitutes customary international law. This is relevant because customary international law was frequently referred to in Canada's legal arguments. Recommend asking MIT/GAC for more background on why this is included and what is the benefit to Ontario of including. Annex 11- B –sets out a description of the parties understanding of what constitutes expropriation. This is relevant because expropriation was one of the claims brought forward by Windstream. Recommend asking MIT/GAC for more background on why this is included and whether it broadens the scope of expropriation. Annex 11-D – sets out a process for legacy investments. Concept is unfamiliar to ENERGY LSB. Recommend asking MIT/GAC for more background on why this is included and whether Ontario has any of these types of legacy investments.	Article 11.21.3: MIT - it appears that the tribunal may accept and consider written amicus curiae submissions – so it is within the tribunal's authority to reject the submission? How do these submissions differ from the non-disputing Party oral and written submissions referred to in Article 11.21.2 Article 11.21.11: MIT/GAC is an appellate mechanism being contemplated? Annex 11-A – Can MIT/GAC provide additional background on why this sets out a description of the parties' understanding of what constitutes customary international law, which has been previously referred to in Canada's past legal arguments. Annex 11- B – Can MIT/GAC provide background on why this is included and whether it broadens the scope of expropriation? Annex 11-D – Can MIT/GAC provide more background on why this is included and whether Ontario has any of these types of legacy investments?
Chapter 11 – Investment, Section B –	Outlines a proposed investor-state dispute resolution process, including mediation, consent to	Article X-18(6): suggests that if an investor has not submitted a claim within one year of requesting consultations, the investor is	It is unclear why this CA proposed text begins at Article X-18. Article X-18(1) states that consultations shall be held within 60 days of

Canada Proposal – November 10, 2017	dispute resolution, constitution and appellate process of a Tribunal, and ethics considerations, among other aspects of dispute resolution.	deemed to have withdrawn its request for consultations and shall not submit a claim with respect to the same measures. This could encourage the investor to move the arbitration forward and not remain in limbo which could be beneficial for ENERGY given that past instances of investors bringing claims and not following through (e.g. Tennant). Article X-19 allows disputing parties to have recourse to mediation at any time. Recommend clarifying with GAC that they have recourse to mediation anytime in the arbitration or whether it is only before the filing of the Article X-20 submission of claim to dispute settlement. Recourse to mediation at anytime in the arbitration process could create flexibility for ENERGY. Article X-20 (10) proposes that the investor may propose that a sole member of the tribunal hear the claim, particularly if the investor is small or medium sized. This is an interesting proposal as it permits smaller enterprises to access tribunals. Article X-28: The Parties are enjoined to work with other trading partners the establishment of multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Once that is established, NAFTA disputes will be	submission of the request for consultations. Can MIT or GAC confirm whether this means that consultations are now required/mandatory? Article X-20 (10) proposes that the investor may propose that a sole member of the tribunal hear the claim, particularly if the investor is small or medium-sized. MIT/GAC, can you clarify the intent of this proposal, and whether this could lead to an increase in disputes? Article XX-27 establishes an Appellate Tribunal. Would this create a right of appeal to this Tribunal, rather than domestic courts? Could investor also appeal to domestic courts given rights of appeal of arbitral awards in domestic legislation? Article XX-28: this provision establishes a multilateral investment tribunal and appellate mechanism – is this the same appellate mechanism being referred to in article XX-27? What is the status of the development of this body? Article XX-29: Recommend asking MIT for clarification of ICJ's jurisdiction over trade disputes. Further, the ICJ is extremely busy. This could slow down proceedings. Article X-33: Recommend that MIT consider asking Canada whether there is the potential to include a provision that documents and

	transitioned to that new body. Article X-29 Ethics: If a disputing party considers that a Member of the Tribunal has a conflict of interest it may invite the President of the International Court of Justice to issue a decision on the challenge. ICJ appears to oversee disputes between sovereign nations and violations of international criminal law. Article X-.33: this type of transparency provision was not in old NAFTA. However, the language in 33 is consistent with the confidentiality order that was used in former arbitrations and Canada's policy position of requiring that the entire NAFTA arbitration be as open and transparent as possible. However, this provision also deals with how information that is marked confidential is shared between the parties, subnational governments and general public. Therefore, it is worth monitoring this provision closely given the large amount of ENERGY confidential information in previous NAFTA disputes. Article X-38 would allow the Tribunal, on request of the disputing Party to order a disputing investor to provide security for all or part of the costs if there are reasonable grounds to believe that there is a risk the disputing investor may not be able to honour	information are only to be used in the current arbitration (and not for example, in subsequent domestic litigation), and also consider raising with Canada the potential to include a provision that would require investors to only use the document production process that is part of the arbitration process and not also use the existing freedom of information act process. Article X-39: The language in this provision suggests that The Tribunal shall issue its final award within 24 months of the date the claim is submitted pursuant to article X-20. Does this mean the entire arbitration would take place in 24 months? Including document production filing written submissions, hearing and arbitration tribunal writing award? Article X-39: what does the language here which states that a disputing party shall abide by and comply with an award without delay mean and that a panel can be established in order for the requesting party to seek a determination that the failure to comply with the award is inconsistent with the obligations in the agreement? Would the parties still have to pursue /commence proceedings in domestic courts for enforcement of the arbitral award?

		a request against it. This is a positive step. Ontario and Canada have been discussing whether it would be possible to ask a Tribunal to require Tennant to pay security. Also, if this provision was in place in the old NAFTA we might not be in the place we are in with Mesa in terms of considering enforcing the arbitral award via US counsel.	
U.S. proposal – Dispute settlement	Requested – will not be circulated to ministries for review (MIT legal to review).	N/A	
Government Procurement – Pre Round 4 consolidated text	Consolidated text on government procurement including procurement notification process, qualification of suppliers, and tendering process. Does not include a list of covered entities for any Party; does not specify rules relating specifically to the energy sector, or other sectors, generally, but would enable Parties to support the participation of SMEs in government procurement.	ENERGY will continue to monitor this chapter. Given the importance of this chapter and possibility that ENERGY entities could be bound by the obligations in the chapter, we will need to continue to consider the obligations as further drafts of the chapter are provided. LSB notes that this may be a good opportunity to clarify any previous ambiguities with the meaning of “government procurement” and “procurement” in this revised text. This particularly important with respect to Electricity “procurement” and in past NAFTA cases the interpretation of “government procurement” and “procurement” under NAFTA has been raised.	MIT/GAC may wish to consider clarifying previous ambiguities with the meaning of “government procurement” and “procurement in this revised text. This is particularly important with respect to electricity procurement, and in past NAFTA cases the interpretation of “government procurement” and “procurement’ under NAFTA has been raised. ENERGY also recommends considering clarifying whether a transmission selection process is considered a procurement.

		SNAP suggests that it would be ideal to include language in this section that clarifies whether a transmission selection process is considered a procurement. For example IESO or OEB or ENERGY could designate a transmitter to build a transmission project.	
Government Procurement – US's Initial Offer (Market Access offer with dollar-for-dollar proposal)	Lists US entities proposed to be covered by government procurement – includes Departments of Commerce and Energy (DOE), FERC, Nuclear Regulatory Commission and in section B, agencies of the DOE responsible for power marketing, utilities. Proposes to exclude DOE's specified procurement of goods/services that support safeguarding of nuclear materials, exclude procurement of services related to the operation of government-owned facilities, public utilities services, and R&D.		Notes to Section A, 4 and Notes to Section D, 1 – This section provides an exception for the department of energy to procure any good or services that supports the safeguarding of nuclear materials or technology, where the Department of Energy conducts the procurement under the authority of the Atomic Energy Act or any oil purchase related to the Strategic Petroleum Reserve. If Canada accepts this offer, would similar exemptions be considered for Ontario? Provincial entities are not listed in this chapter but MIT had previously indicated that Canada's offer was to cover virtually all federal, provincial and municipal procurement. If this text is accepted, would this chapter be expanded to bind provincial energy entities? Would Hydro One, municipally-owned local distribution companies, Ontario Power Generation, Independent Electricity System Operator and Ontario Energy Board be bound by the obligations in this chapter?
Canada	One-page paper compares the	*Note:* MOF has also received this text and is	Recommend that MIT consider an exemption for

Explanatory SOE paper	merits of using text based on CETA versus text based on TPP (latter has been U.S. approach). CETA version of SOE chapter would apply to sub-national governments, but energy is identified as being potentially excluded from the chapter via an Annex that could be tabled by parties on a reciprocal basis.	working with MIT on securing an exclusion from CETA for Hydro One.	Hydro One as well as potentially other ENERGY agencies depending on commitments in the chapter. Could MIT provide additional information regarding obligations for ENERGY and the energy sector?
State-Owned Enterprise Definition – Canada's Text	Includes background about different Parties' definitions of State-Owned Enterprise, and proposed definitions from Canada, the US, and Mexico.		Wording of all three proposals for "State-owned enterprise" appears to be broad and potentially cover entities such as Hydro One, Ontario Power Generation Inc., the IESO and municipally-owned local distribution companies. Can MIT/GAC please clarify whether these entities are intended to be bound by the obligations in this chapter? ENERGY notes that it has limited knowledge of procurement activities of its arms-length entities and this Article may be difficult to enforce. If these entities are covered by this chapter, can MIT/GAC please provide more details about the specific obligations set out in this article? It appears this article places restrictions on the purchase and sale of goods and services. Specifically, in(c) of Canada's definition, it is not clear what is meant by "control". Can GAC please clarify if this would be the international standard of "control" that applies? This is important for Ontario as, depending on the

			definition of "control", certain provincially owned entities may or may not be caught.
SOEs – consolidated text (Sept 25, 2017)	Working text on state-owned enterprises; see comments on October 11 version, below.	*See comments on October 11 version of the consolidated text, below.*	
SOEs – consolidated text (Oct 11, 2017)	Working text on state-owned enterprises; Canada consulting provinces in particular on Definition of SOEs (see also the Canada Explanatory SOE paper outlined above).		Recommend that MIT consider an exemption for Hydro One as well as potentially other ENERGY agencies depending on commitments in the chapter. Article X.4: Wording of U.S. and Mexico proposals for "State-owned enterprise" appears to be broad and potentially cover entities such as Hydro One, Ontario Power Generation Inc., the IESO and municipally-owned local distribution companies. Can MIT/GAC please clarify whether these entities are intended to be bound by the obligations in this chapter? ENERGY notes that it has limited knowledge of procurement activities of its arms-length entities and this Article may be difficult to enforce. If these entities are covered by Article X.4, can MIT/GAC please provide more details about the specific obligations set out in this article? It appears this article places restrictions on the purchase and sale of goods and services. Article X.5: Can MIT/GAC clarify as ot whether the Ontario Energy Board would be bound by this provision? Article X.6 (1c): To help ENERGY determine

			whether there are implications of this provision for OPG in the context of the Fair Hydro Plan, can MIT/GAC provide further clarity on what is meant by a “conversion of debt to equity” and what are “circumstances where this would be inconsistent with usual investment practices of a private investor”? Article X.10 (3) regarding provisions about the information that can be shared with other countries on request, there doesn’t seem to be a provision that allows Parties to withhold information. How does GAC plan to address this? ENERGY notes that these provisions may extend to certain confidential/commercial information that may be subject to FIPPA or Canadian equivalent.
Environment – U.S. additional provisions	Environmental provisions are currently reflected outside of NAFTA proper, in an Environmental Cooperation Agreement; proposed text would to establish an Environment Committee and expand cooperative relationship on environmental matters. Proposes a public engagement process on environmental matters under NAFTA.	It is difficult to determine with certainty whether ENERGY programs and policies would be captured by this chapter. The chapter creates a public submissions process whereby person of a party can file submissions asserting that a Party is failing to effectively enforce its environmental laws. This triggers a process by the NAFTA secretariat.	Can MIT/GAC confirm whether there are definitions of what would be considered a “Party’s environmental law”. For example, could Ontario programs and policies regarding energy efficiency and/or Green Energy and/or climate change be caught by the public submissions process set out in this chapter?
Environment – Mexican proposal on air quality	Proposes that each Party make the following public, and to cooperate on areas of mutual	Article X.X Air Quality subsection 6 includes references to Parties cooperating to address matters of mutual interest in areas related to	The Electricity Market is identified in Ontario’s Climate Change Action Plan (i.e. publically) as a sector that contributes to greenhouse gas

	interest wrt. air quality, including emissions factors. - Air quality data - Information about its programs and activities to reduce air pollution	(d) emission factors; (f) methodologies for air quality and emissions' measurements; (g) spatial distribution of main sources and their emissions; and, (i) incentives for clean production and installation of pollution prevention technologies. Based on this high level information it is difficult to assess how this could impact ENERGY. ENERGY will continue to monitor this chapter.	emissions; further, Ontario reports regularly on electricity sector emissions through the Ontario Energy Report website. Can MIT/GAC further clarify whether Ontario would be asked to exchange information and experiences related to Ontario's electricity market?
U.S. proposal on third party dumping for Trade Remedies	Single paragraph enabling parties to disregard certain cost valuations in trade remedies where it has been determined that export subsidies existed.	It is difficult to assess impact of this single paragraph without additional context.	Can MIT share their thoughts/assessment on how this paragraph would operate and impact Ontario?
Sectoral Annex – Consolidated ICT	Applies to Information and Communication Technology (ICT) goods that use cryptography.	Chapter does not appear to apply to the energy sector at this point; ENERGY will continue to monitor this chapter in case contents pivot to more cybersecurity type issues.	
CA Proposed Text - Trade and Indigenous Peoples	Text includes proposed preamble for NAFTA 2.0, and general provisions that affirm commitments to existing declarations (e.g. UN Declaration on the Rights of Indigenous Peoples), acknowledge each Party's role in implementing programs that facilitate the participation of Indigenous people in international economic activity, and providing direction to Parties		General Comment: • MIT/GAC – ENERGY understands that this Chapter does not impose rigid requirements on parties or their sub-national governments/public bodies with respect to the matters outlined in the Chapter. Instead it appears that the Chapter is simply meant to outline broad objectives to endeavour to explore opportunities to further the outlined goals of the Chapter (i.e. more permissive obligations than strict mandatory

	to consider undertaking joint activities in this regard. The chapter commits to establishing a committee on Trade and Indigenous Peoples.		requirements). Is this correct? This is important to ENERGY, particularly in light of the Province's current Consultation processes as we would want to ensure that the Province would have a say in anything that impacts these processes,. Can you please further elaborate on the nature of the commitments provided for in this Chapter? Article X.2 • MIT/GAC In section 3 – what is captured as "relevant government bodies"? Does this include just federal and/or provincial levels of government or does it go further than this to extend to government agencies and other public bodies at both the federal and provincial/territorial level? This clarification will be important to ENERGY to be able to fully assess the implications of these obligations. Similarly, what is meant to be captured by "other groups"? • MIT/GAC – Re: Section 4 – Will this obligation to create a public website trickle down to Provinces/government bodies captured by this Chapter? It appears from the current language that only the Party would need to maintain a website. How would activities of provincial/territorial governments and their various government bodies be

reported?

Article X.3

- MIT/GAC – section 2 – what is meant by "shall consider matters" – does this give the Committee to hear and consider disputes that may arise under this Chapter? If so, please consider whether the Chapter needs to further elaborate on this even if it is just an informal process.
- MIT/GAC – Section 5a – again not clear on what is meant by "consider any matter" – does this mean they can make a binding decision upon consideration of the matter? Who would the decision bind?
- MITC/GAC – 5d – this provision states that the Committee would be able to "determine" the joint activities under Article X.2 – to what extent would provincial governments/bodies have input into this process on activities that they would be implicated in?