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FREE TRADE AGREEMENT BETWEEN CHILE AND MEXICO

The following text reproduces the Free Trade Agreement.[1]

FREE TRADE AGREEMENT BETWEEN CHILE AND MEXICO

PREAMBLE

The Government of the Republic of Chile (Chile) and the Government of the United Mexican States (Mexico), resolved to:

Strengthen the special bonds of friendship and cooperation between their nations;

Fortify the Latin American integration process to achieve the objectives envisaged in the Montevideo Treaty 1980;

Achieve a better balance in trade relations between their countries;

Contribute to the harmonious development and expansion of world trade and broader international cooperation;

Create an expanded and secure market for the goods and services produced in their territories;

[1] The annexes (Annex 4-03; Annexes I-VI) have been remitted to the Secretariat (Despatch 3006) so that interested Members can consult them. They are also available at the web site of the Department of Economic Affairs of Mexico at http://www.economia-snci.gob.mx/tratados/tlcchile/frame3.htm

Reduce distortions to trade;

Establish clear and mutually advantageous rules governing their trade;

Ensure a predictable commercial framework for business planning and investment;

Build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, the Montevideo Treaty 1980 and other multilateral and bilateral instruments of integration and cooperation;

Enhance the competitiveness of their firms in global markets;

Encourage innovation and creativity through the protection of intellectual property rights;

Create new employment opportunities and improve working conditions and living standards in their respective territories;

Undertake each of the preceding in a manner consistent with environmental protection and conservation;

Promote sustainable development;

Preserve their capacity to safeguard the public welfare;

Promote dynamic participation by the different economic agents, particularly the private sector, in the effort to enhance economic relations between the Parties and to develop and cultivate to the greatest extent possible the opportunities for their joint presence on international markets; and

Contribute to hemispheric integration;

Have agreed as follows:

PART ONE - GENERAL PART

CHAPTER 1. INITIAL PROVISIONS

Article 1-01

Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, which are part of the Marrakesh Agreement Establishing the World Trade Organization, and the Montevideo Treaty 1980, hereby establish a free trade area.

Article 1-02

Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favoured-nation treatment and transparency, are to:

(a) encourage the expansion and diversification of trade between the Parties;

(b) eliminate barriers to trade and facilitate the movement of goods and services in the free trade area;

(c) promote conditions of fair competition in the free trade area;

(d) increase substantially investment opportunities in the free trade area;

(e) protect and appropriately and effectively enforce intellectual property rights in the free trade area;

(f) establish a framework for further bilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement; and

(g) establish effective procedures for the application and observance of this Agreement, for its joint administration and for dispute settlement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article 1-03

Relation to Other International Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the Agreement Establishing the World Trade Organization, the Montevideo Treaty 1980 and other agreements to which they are party.

2. In the event of any inconsistency between this Agreement and the agreements and treaties mentioned in paragraph 1, this Agreement shall prevail to the extent of the inconsistency.

Article 1-04

Observance of the Agreement

The Parties shall ensure that all necessary measures are taken for observance of the provisions of this Agreement in their territories by their national or federal, state and municipal governments, except as otherwise provided in this Agreement.

Article 1-05

Successor Agreements

All references to any other international agreement or treaty shall be understood to be made in the same terms to a successor agreement or treaty to which the Parties are party.

Article 1-06

Relation to Environmental and Conservation Agreements

In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

(a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, 3 March 1973, as amended 22 June 1979;

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, 16 September 1987, as amended 29 June 1990; or

(c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, 22 March 1989;

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

CHAPTER 2. GENERAL DEFINITIONS

Article 2-01

Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

customs duty includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law;

(c) fee or other charge in connection with importation commensurate with the cost of services rendered; and

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

Commission means the Free Trade Commission established under Article 17-01(1) (The Free Trade Commission);

Customs Valuation Code means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including its interpretative notes, which is part of the WTO Agreement;

days means calendar days;

ECA No. 17 means the Economic Complementation Agreement between Chile and Mexico of 22 September 1991;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any foundation, corporation, trust, partnership, sole proprietorship, joint venture or other association;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing means in effect on the date of entry into force of this Agreement;

GATS means the General Agreement on Trade in Services, which is part of the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. Goods of a party may incorporate materials from non-Party countries;

Harmonized System means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

heading means the first four digits in the tariff classification number under the Harmonized System;

LAIA means the Latin American Integration Association created under the Montevideo Treaty 1980;

measure includes any law, regulation, procedure, requirement or practice;

Montevideo Treaty 1980 means the Treaty of Montevideo Establishing the Latin American Integration Association;

national means a natural person who is a citizen of a Party as established in Annex 2-01. The term also includes persons who are permanent residents in the territory of that Party under its law;

NAFTA means the North American Free Trade Agreement, done on 17 December 1992;

originating means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin);

Party means a State in which this Agreement has entered into force;

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

Secretariat means the Secretariat established under Article 17-02 (The Secretariat);

states includes the municipal governments in a state, except as otherwise provided in this Agreement;

State enterprise means an enterprise that is owned or controlled through ownership interests by a Party;

subheading means the first six digits in the tariff classification number under the Harmonized System;

Tariff Reduction Programme means the programme established in Article 3-04(3) (Tariff Elimination);

territory means for a Party the territory of that Party as set out in Annex 2-01;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement;

Uniform Regulations means the regulations established pursuant to Article 5-12 (Uniform Regulations); and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

ANNEX 2-01

Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

citizen means:

(a) with respect to Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile ("Constitución Política de la República de Chile"); and

(b) with respect to Mexico, a Mexican as defined in Article 30 of the Political Constitution of the United Mexican States ("Constitución Política de los Estados Unidos Mexicanos"); and

territory means:

(a) with respect to Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf over which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(b) with respect to Mexico:

(i) the states of the Federation and the Federal District;

(ii) the islands, including the reefs and keys, in adjacent seas;

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean;

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs;

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;

(vi) the space located above the national territory, in accordance with international law; and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law,

Mexico may exercise rights with respect to the seabed and subsoil and their natural resources.

PART TWO – TRADE IN GOODS

CHAPTER 3. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A – Definitions, Scope and Coverage

Article 3-01

Definitions

For the purposes of this Chapter:

advertising films means recorded visual media, with or without sound-tracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment;

agricultural good means a good classified in one of the following chapters, headings or subheadings of the Harmonized System:

(The descriptions are provided for purposes of reference)

Chapters 1 through 24	(other than a fish or fish product)
Subheading 2905.43	Manitol
Subheading 2905.44	Sorbitol
Subheading 2918.14	Citric acid
Subheading 2918.15	Salts and esters of citric acid
Subheading 2936.27	Vitamin C and its derivatives
Heading 33.01	Essential oils
Headings 35.01 to 35.05	Albuminoidal substances, modified starches
Subheading 3809.10	Finishing agents
Subheading 3824.60	Sorbitol, except in subheading 2905.44
Headings 41.01 to 41.03	Hides and skins
heading 43.01	Raw furskins
headings 50.01 to 50.03	Raw silk and silk waste
headings 51.01 to 51.03	Wool and animal hair
headings 52.01 to	Raw cotton, cotton waste and cotton carded or combed

52.03	
heading 53.01	Raw flax
heading 53.02	Raw hemp

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of either of the Parties, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

consumed means:

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good;

export of goods means the export or temporary export of goods;

export subsidies refer to:

(a) the provision by governments or their agencies of direct subsidies, including payments in kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board;

(b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;

(c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments; and

(f) subsidies on agricultural products contingent on their incorporation in exported products;

first come first served means the mechanism for assigning quotas, in accordance with the administrative procedures established in the Uniform Regulations in this Chapter;

fish and fish products means fish, crustaceans, molluscs and all other aquatic invertebrates, marine mammals and by-products thereof, classified in one of the following chapters, headings or subheadings of the Harmonized System:

(The descriptions are provided for purposes of reference)

Chapter 03	Fish and crustaceans, molluscs and other aquatic invertebrates
Heading 05.07	Ivory, tortoise-shell, marine mammals, horns, antlers, shells, hooves, nails, claws and beaks, and products thereof
Heading 05.08	Coral and similar materials
Heading 05.09	Natural sponges of animal origin
Heading 05.11	Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of chapter 3
Heading 15.04	Fats and oils and their fractions, of fish or marine mammals
Heading 16.03	Extracts and juices other than of meat
Heading 16.04	Prepared or preserved fish
Heading 16.05	Prepared or preserved crustaceans, molluscs and other aquatic invertebrates
Subheading 2301.20	Flours, meals, pellets, of fish

goods imported for sports purposes means sports requisites for use in sports contests, demonstrations or training in the territory of the Party into whose territory such goods are imported;

goods intended for display or demonstration includes their component parts, ancillary apparatus and accessories;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters that are used to promote, publicize or advertise a good or service and are supplied free of charge;

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good. An operation or process that is part of the production or assembly of an unfinished good into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration;

solicitation of orders means the solicitation or drawing up of orders;

temporary admission of goods means temporary admission of goods or temporary importation of goods; and

used vehicle means a “used vehicle” as defined in Annex 3-01.

Article 3-02

Scope and Coverage

This Chapter applies to trade in goods of a Party.

Section B – National Treatment

Article 3-03

National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end Article III of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a state, treatment no less favourable than the most favourable treatment accorded by such state to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part. “Goods of the Party” includes goods produced in a state of that Party.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 3-03.

Section C - Tariffs

Article 3-04

Tariff Elimination

1. Except as provided in Annexes 3-04(3) and 3-04(4), the Parties shall eliminate all customs duties on originating goods on the date of entry into force of this Agreement.

2. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new duty, on a good.

3 Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Tariff Reduction Programme in Annex 3-04(3).

4. Notwithstanding paragraphs 1, 2 and 3, a Party may adopt or maintain customs duties in accordance with its rights and duties under the GATT 1994 on the originating goods included in Annex 3-04(4) until such time as the parties agree otherwise in accordance with paragraph 5.

5. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in Annex 3-04(3) or include goods covered in Annex 3-04(4) in their Tariff Reduction Programme. An agreement between the Parties, reached pursuant to Article 17-01(3) (Free Trade Commission) to accelerate the elimination of a customs duty on a good or to include a good in their Tariff Reduction Programmes shall supersede any duty rate or staging category determined pursuant to their Schedules for such good.

6. When this Agreement comes into force, the preferences negotiated or granted between the Parties under the Montevideo Treaty 1980 shall be rescinded.

7. Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annexes 3-04(3) or 3-04(4), provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

8. On written request of either Party, a Party applying or intending to apply measures pursuant to paragraph 7 shall consult to review the administration of those measures.

9. Paragraphs 1, 2 and 3 are not intended to prevent a Party from maintaining or raising a customs duty that may be permitted under a dispute settlement ruling under the WTO Agreement or any other agreement negotiated under the WTO Agreement.

Article 3-05

Customs Valuation Code

The Customs Valuation Code shall govern the customs valuation rules applied by the Parties to their reciprocal trade. The Parties agree that they will not make use in their reciprocal trade of the options and reservations permitted under Article 20 and paragraphs 2, 3 and 4 of Annex III of the Customs Valuation Code.

Article 3-06

Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission, including exemption from fees as specified in Annex 3-06 for:

(a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 13 (Temporary Entry for Business Persons);

(b) equipment for the press or for sound or television broadcasting and cinematographic equipment;

(c) goods imported for sports purposes and goods intended for display or demonstration; and

(d) commercial samples and advertising films;

imported from the territory of the other Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that such good:

(a) be imported by a national or resident of the other Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;

(c) not be sold or leased while in its territory;

(d) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;

(e) be capable of identification when exported;

(f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and

(g) be imported in no greater quantity than is reasonable for its intended use.

3. Except as otherwise provided in this Agreement, neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

(a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party;

(b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;

(c) be capable of identification when exported;

(d) be exported within such period as is reasonably related to the purpose of the temporary admission; and

(e) be imported in no greater quantity than is reasonable for its intended use.

4. Where a good is temporarily admitted duty free under paragraph 1 and any condition the Party imposes under paragraph 2 and 3 has not been fulfilled, a Party may impose:

(a) the customs duty and any other charge that would be owed on final importation of the good; and

(b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.

5. Subject to Chapters 9 (Investment) and 10 (Cross-Border Trade in Services):

(a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes such container to the territory of the other Party.

6. For purposes of paragraph 5, “vehicle” means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 3-07

Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of the other Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party; or

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Article 3-08

Goods Re-Entered after Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

Section D – Non-Tariff Measures

Article 3-09

Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994, including its interpretative notes. To this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:

(a) limiting or prohibiting the importation from the territory of the other Party of such good; or

(b) requiring as a condition of export of such good to the territory of the other Party, that the good not be re-exported to the non-Party,

directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on request of the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3-09.

Article 3-10

Customs User Fees

Effective 30 June 1999, the Parties shall eliminate all their customs user fees on originating goods, including those established in Annex 3-10. From the time this Agreement comes into force until 30 June 1999, neither Party may increase or establish new customs user fees for originating goods.

Article 3-11

Export Taxes

Except as provided in Annex 3-11, neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

Article 3-12

International Obligations

A Party, prior to adopting a measure under an inter-governmental agreement on commodities pursuant to Article XX(h) of the GATT 1994, which may affect the trade in commodities between the Parties, shall consult the other Party to prevent the nullification or impairment of a concession granted by that Party under Article 3-04.

Article 3-13

Export Subsidies on Agricultural Goods

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve such an agreement under the framework of the WTO Agreement.

2. Effective 1 January 2003, neither Party shall introduce or maintain any export subsidy on agricultural goods in their reciprocal trade. As of that date, the Parties also renounce the rights conferred under the GATT 1994 to use export subsidies and

the rights with respect to the use of such subsidies in their reciprocal trade that may arise from multilateral negotiations on trade in agriculture under the framework of the WTO Agreement.

3. Notwithstanding paragraph 2, if at the request of the importing Party, the Parties agree to an export subsidy on an agricultural good to the territory of the importing Party, the exporting Party may adopt or maintain such subsidy.

4. Where a Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the other Party, consult with it with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of any such subsidized imports. During the period before 1 January 2003, if the importing Party adopts the agreed-upon measures, the other Party shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

5. Until 1 January 2003, should a Party introduce, re-introduce or increase a subsidy on the export of an agricultural good, the other Party may increase the rate of duty applicable to such exports up to the level of the most-favoured-nation tariff.

Article 3-14

Domestic Support

With respect to domestic support for agricultural goods, the Parties shall comply with the Agreement on Agriculture, which forms part of the WTO Agreement.

Section E – Automotive Sector

Article 3-15

Automotive Sector

For trade in automotive vehicles, the Parties shall comply with the provisions of Annex 3-15.

Section F - Consultations

Article 3-16

Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall be established within three months after the date on which this Agreement comes into force. The Committee shall adopt its decisions by mutual agreement.

3. The Committee shall convene on the request of either Party or the Commission to oversee the effective implementation of this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures) and the Uniform Regulations.

4. The Committee shall:

(a) coordinate activities and oversee the functioning of the Sub-Committees on Non-Agricultural Goods, Agriculture, Rules of Origin and Customs, in accordance with paragraphs 5, 6 and 7 and Articles 4-18 (Sub-Committee on Rules of Origin) and 5-14 (Customs Sub-Committee), for which purpose it may meet with the chairs of those sub-committees;

(b) request periodic reports from the Sub-Committees on matters in their sphere of competence;

(c) at the request of either of the Parties, evaluate and recommend proposals for modifications, rectifications or additions to the applicable provisions for better application of paragraph 3;

(d) propose to the Commission the review of measures in effect in the Parties, necessary for application of the Chapters and Regulations mentioned in paragraph 3; and

(e) carry out the other tasks agreed on by the Parties or the Commission under this Agreement and other instruments deriving from it.

5. The Parties establish the following Sub-Committees: Non-Agricultural Goods, Agriculture, Rules of Origin and Customs, comprising representatives of each Party. The Sub-Committees shall:

(a) monitor application of the provisions of this Agreement linked, directly or indirectly, to their spheres of competence;

(b) recommend to the Committee the adoption of measures to further free trade between the Parties;

(c) report periodically to the Committee and, when pertinent, to related Sub-Committees, on the agreements reached and the activities performed in exercise of their functions;

(d) convene at least once a year and whenever so requested by a Party or the Commission;

(e) consider any matter in their sphere of competence submitted or consulted by a Party, the Committee or another Sub-Committee;

(f) refer to the Committee any matter on which it has been unable to reach agreement within 60 days after it has begun to examine that matter; and

(g) carry out the other tasks referred to it by the Committee under this Agreement and other instruments deriving from it.

6. Notwithstanding paragraph 5, the Sub-Committee on Non-Agricultural Goods shall:

(a) support technical studies for the application of Article 3-17(5);

(b) carry out consultations and studies to include the non-agricultural goods listed in Annex 3-04(4) in the Tariff Reduction Programme;

(c) refer to the Committee matters that impede access by non-agricultural goods to the territory of the Parties, particularly relating to the application of non-tariff measures; and

(d) conduct studies to define the administrative processes of the quota-allocation mechanism established in Annex 3-15.

7. Notwithstanding paragraph 5, the Sub-Committee on Agriculture shall:

(a) support technical studies for the application of Article 3-17(5) with respect to agricultural goods;

(b) refer to the Committee difficulties in applying the provisions in its sphere of competence that affect trade in agricultural goods;

(c) promote trade in agricultural goods through consultations and studies to accelerate the elimination of tariffs on the agricultural goods in Annex 3-04(3) and to include the agricultural goods listed in Annex 3-03(4) in the Tariff Reduction Programme;

(d) refer to the Committee matters that impede access by agricultural goods to the territory of the Parties, particularly relating to the application of non-tariff measures; and

(e) conduct studies to define the administrative processes of the quota-allocation mechanism established in Annex 3-04(3).

Article 3-17

Information and Consultations

1. At the request of one Party, the other Party shall provide information and respond promptly to questions regarding any existing or planned measure related to the application of this Chapter.

2. If, during the Agreement, a Party considers that a measure in the other Party affects the effective application of this Chapter, that party may refer the matter to the Committee.

3. Within 30 days after submission of the request, the Committee may request technical reports from the competent authorities and takes steps to help resolve the matter.

4. If the Committee has met as established in Article 3-16 but fails to reach agreement within the established time or considers that the matter is outside its sphere of competence, either Party may request in writing that the Commission meet as established in Article 17-01 (Free Trade Commission).

5. The Parties undertake within a year after this Agreement comes into force to identify, in terms of tariff item and nomenclature under their respective tariffs, the measures, restrictions or prohibitions on the importation or exportation of goods for reasons of national security, public health, preservation of wildlife, the environment, animal health, standards, labels, international commitments, requirements of public order or any other regulation. The Parties shall update that information and communicate it to the Committee, whenever necessary.

CHAPTER 4: RULES OF ORIGIN

Article 4-01

Definitions

For the purposes of this Chapter:

direct costs and expenses of manufacture means the costs and expenses incurred during a period that are directly related to the good, but different from the cost or value of direct materials and the cost of direct labour;

F.O.B. means free on board, regardless of the mode of transportation, at the point of shipment abroad;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical, which cannot be differentiated by a simple visual examination;

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;

good means any merchandise, product, article or matter;

goods wholly obtained or produced entirely in the territory of one or both Parties means:

(a) mineral goods extracted in the territory of one or both Parties;

(b) vegetable goods harvested in the territory of one or both Parties;

(c) live animals born and raised in the territory of one or both Parties;

(d) goods obtained from hunting or fishing in the territory of one or both Parties;

(e) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with that Party and fly its flag;

(g) goods taken by a Party or a person of a Party from the seabed or marine subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or marine subsoil;

(h) waste and scrap derived from:

(i) production in the territory of one or both Parties; or

(ii) used goods collected in the territory of one or both Parties, provided such goods are fit only for the recovery of raw materials; and

(i) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) through (h), or from their derivatives, at any stage of production;

identical or similar goods means “identical goods” and “similar goods”, respectively, as defined in the Customs Valuation Code;

indirect costs and expenses of manufacture means the costs and expenses incurred in a period, other than the direct costs and expenses of manufacture, the cost of direct labour, and the cost or value of direct materials;

indirect material means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies and moulds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials and other materials used in production or to operate equipment and buildings;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, devices, and supplies used for testing or inspecting the goods;

(g) catalysts and solvents; and

(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article 4-07;

location of the producer in relation to a good means the plant that produces such good;

material means a good that is used in the production of another good;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and repacking costs;

originating material means a material that qualifies as originating under this Chapter;

packing materials and containers for shipment means goods used to used to protect a good during transport, other than the packaging and materials for retail sale;

producer means a person who grows, mines, harvests, fishes, hunts, manufactures, processes or assembles a good;

production means growing, mining, harvesting, fishing, hunting, manufacturing, processing or assembling a good;

related person means a person related to another person on the basis that:

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person who directly or indirectly owns, controls or holds 25 per cent or more of the outstanding voting stock or shares of each of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family (children, brothers, sisters, grandparents, or spouses);

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(a) personnel training, without regard to where performed; and

(b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services or other services;

sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and aftersales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials, exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and aftersales service personnel;

(d) recruiting and training of sales promotion, marketing and aftersales service personnel, and aftersales training of customers' employees, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and aftersales service of goods, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and aftersales service offices and distribution centres;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

shipping and repacking costs means the costs incurred in repacking a good and shipping the good outside the territory where the producer or exporter of the good is located;

total cost means the sum of the following:

(a) the cost or value of the direct materials used in the production of the good;

(b) the cost of the direct labour used in production of the good;

(c) a reasonable amount for direct and indirect costs of manufacturing the good, excluding the following:

(i) the costs and expenses of a service provided by the producer of a good to a third party, when the service is not related to the good,

(ii) the costs and losses resulting from the sale of part of the company of the producer, which constitutes a discontinued operation,

(iii) the costs related to the cumulative effect of changes in the application of accounting principles,

(iv) the costs or losses resulting from the sale of a capital good of the producer,

(v) the costs and expenses related to Acts of God or force majeure,

(vi) the earnings obtained by the producer of the good, regardless of whether they were retained by the producer or paid to other persons as dividends and the taxes on those earnings, including the capital gains tax, and

(vii) the interest costs agreed to by related persons in excess of the interest paid at market rates;

transaction value of a good means the price actually paid or payable for a good with respect to a transaction of the producer of the good, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Code shall be the producer of the good;

transaction value of a material means the price actually paid or payable for a material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good or material is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Code shall be the supplier of the material and the buyer referred to in the Customs Valuation Code shall be the producer of the good; and

used means used or consumed in the production of goods;

Article 4-02

Interpretation and Application

1. For the purposes of this Chapter:

(a) the basis for tariff classification is the Harmonized System;

(a) the transaction value of a good or material shall be determined on the basis of the principles of the Customs Valuation Code; and

(b) all the costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

2. In applying the Customs Valuation Code under this Chapter to determine the origin of a good:

(a) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions; and

(b) the provisions of this Chapter shall take precedence over the Customs Valuation Code to the extent of any difference.

Article 4-03

Originating Goods

1. Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 4-01;

(b) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials as defined in this Chapter;

(c) the good is produced in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification and meet other requirements, as set out in Annex 4-03, and the good satisfies all other applicable provisions of this Chapter;

(d) the good is produced in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification and meet other requirements and the good satisfies the regional value content, as set out in Annex 4-03, and all other applicable provisions of this Chapter;

(e) the good is produced in the territory of one of both of the Parties and satisfies the regional value content as specified in Annex 4-03 and all other applicable requirements of this Chapter; or

(f) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good do not undergo a change in tariff classification because:

(i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to Rule 2(a) of the General Rules of Interpretation of the Harmonized System, or

(ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the regional value content of the good, determined in accordance with Article 4-04, is not less than 50 per cent where the transaction value method is used, or is not less than 40 per cent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter, unless the applicable rule of Annex 4-03 under which it is classified specifies a different regional value content requirement, in which case that requirement is to be applied.

2. For the purposes of this Chapter, a good produced from non-originating materials that undergo a change in tariff classification and satisfy the other requirements set out in Article 4-03 shall have been produced entirely in the territory of one or both Parties and the entire regional value content of the good shall be met in the territory of one or both Parties.

Article 4-04

Regional Value Content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 4.

2. The regional value content of a good may be calculated on the basis of the following transaction value method:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted to a F.O.B. basis, except as provided in paragraph 3; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with Article 4-05.

2. For the purposes of paragraph 2, where the producer of the good does not export it directly, the transaction value shall be adjusted to the point at which the purchaser receives the good within the territory where the producer is located.

3. The regional value content of a good may be calculated on the basis of the following net cost method:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with Article 4-05.

5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 4 where:

(a) there is no transaction value for the good because it is not for sale;

(b) the transaction value of the good cannot be determined owing to restrictions on the assignment or use of the good by the buyer with the exception of those that:

(i) are imposed or required by the law or the authorities of the Party in which the purchaser of the good is located,

(ii) limit the geographical territory in which the good can be resold, or

(iii) do not substantially affect the value of the good;

(c) the sale or the price depends on a condition or consideration whose value cannot be determined in relation to the good;

(d) part of the proceeds from the resale of the product or from any subsequent assignment or use of the good by the buyer reverts directly or indirectly to the vendor, unless the necessary adjustment can be made in accordance with Article 8 of the Customs Valuation Code;

(e) the buyer and the vendor are related persons and the relationship between them influences the price, except as provided in paragraph 2, Article 1, of the Customs Valuation Code;

(f) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods sold to related persons during the six-month period immediately preceding the month in which the good is sold by the producer exceeds 85 per cent of the producer's total sales of such goods during that period;

(g) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 4-08; or

(h) the good is designated as an intermediate material under Article 4-07 and is subject to a regional value-content requirement.

6. If an exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method set out in paragraph 2 and a Party subsequently notifies the exporter or producer, during the course of a verification pursuant to Chapter 5 (Customs Procedures), that the transaction value of the good, or the value of any material used in the production of the good, is required to be adjusted or is unacceptable under paragraph 5, the exporter or producer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 4.

7. With the exception of the goods covered in Article 4-15, a producer may average the regional value content of one or all of the goods included in the same subheading, that are produced by the same plant or in different plants in the territory of a Party, either taking as the base all the goods produced by the producer or only the goods that are exported to the other Party:

(a) in the fiscal year or period; or

(b) in any monthly, bimonthly, quarterly, four-monthly or semiannual period.

8. Article 20-10 (Revocations and Transitory Provisions) shall apply to goods classified in subheadings 8422.40 and 8431.43.

Article 4-05

Value of Materials

1. The value of a material shall:

(a) be the transaction value of the material; or

(b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code.

2. Where not included under paragraph 1 (a) or (b), the value of a material shall include:

(a) freight, insurance, packing and all other costs incurred in transporting the material from the port of importation in the territory of the Party where the producer is located, except as provided in paragraph 3;

(b) the cost of waste and spoilage resulting from the use of the material in the production of the good, less any costs recovered, provided the recovery does not exceed 30 per cent of the value of the material, determined in accordance with paragraph 1.

3. Where the producer of a good buys a non-originating material in the territory of the Party where the producer is located, the value of the non-originating material shall not include freight, insurance, packing or any other cost incurred in transporting the material from the warehouse of the supplier to the location of the producer.

4. To calculate the regional value content under Article 4-04, the value of the non-originating materials used by the producer in the production of a good shall not include the value of the non-originating materials used by:

(a) another producer in the production of an originating material that is purchased and used by the producer of the good in its production; or

(b) the producer of the good in the production of a self-manufactured originating material, designated by the producer as an intermediate material in accordance with Article 4-07.

Article 4-06

De Minimis

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an

applicable change in tariff classification set out in Annex 4-03 is not more than eight per cent of the transaction value of the good, adjusted on the basis of Article 4-04 (2) or (3) as appropriate, or in the cases referred to in Article 4-04 (5), if the value of all non-originating materials is not more than eight per cent of the total cost of the good.

2. If a good mentioned in paragraph 1 is also subject to a regional value content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good and the good must satisfy all other applicable requirements of this Chapter.

3. A good that is subject to a regional value-content requirement established in Annex 4-03 shall not be required to satisfy such requirement if the value of all non-originating materials is not more than eight per cent of the transaction value of the good, adjusted on the basis of Article 4-04 (2) or (3) as appropriate, or in the cases referred to in Article 4-04 (5), if the value of all non-originating materials is not more than eight per cent of the total cost.

4. Paragraph 1 does not apply to:

(a) goods provided for in Chapter 50 through 63 of the Harmonized System; or

(b) a non-originating material used in the production of a good provided for in Chapter 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

Article 4-07

Intermediate Materials

1. For the purposes of calculating the regional value content under Article 4-04, the producer of a good may designate as an intermediate material, any self-produced material used in the production of the good, provided such material is an originating good as established in Article 4-03.

2. Where an intermediate material is subject to a regional value content under Annex 4-03, the value shall be calculated on the basis of the net cost method established in Article 4-04 (4).

3. For the purposes of calculating the regional value content of a good, the value of the intermediate material shall be the total cost that can reasonably be assigned to that intermediate material as established in the Uniform Regulations of this Chapter.

4. If a material designated as an intermediate material is subject to a regional value content, no other self-produced material subject to a regional value content used in the production of that intermediate material may be designated by the producer as an intermediate material.

5. Except where two or more producers accumulate their production under Article 4-08, the restriction established in paragraph 4 shall not apply to an intermediate material used by another producer in the production of a material that is subsequently purchased and used in the production of a good by the producer mentioned in paragraph 4.

Article 4-08

Accumulation

1. For the purposes of determining whether a good is an originating good, the producer of a good may choose to accumulate own production with that of one or more producers in the territory of one or both Parties of materials that are incorporated into that good, so that the production of the materials is considered to have been performed by that producer, provided the good complies with the requirements of Article 4-03.

2. In cases in which the accumulated good is subject to a regional value-content requirement, the calculation shall be performed on the basis of the net cost method.

Article 4-09

Fungible Goods and Materials

1. For the purposes of determining whether a good is an originating good when originating and non-originating fungible materials are commingled in the inventory, the origin of the materials may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations.

2. Where originating and non-originating fungible goods are commingled in the inventory and do not undergo any productive process or any other operation in the territory of the Party in which they were commingled, other than unloading, reloading or any other movement necessary to maintain the goods in good condition or ship them to the territory of the other Party, the origin of the good may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations.

3. Once one of the inventory management methods set out in the Uniform Regulations has been selected, it shall be used during the entire fiscal year or period.

Article 4-10

Sets and Assortments

1. Sets and assortments of goods classified as provided in Rule 3 of the General Rules of Interpretation, of the Harmonized System and goods whose description under the nomenclature of the Harmonized System is specifically that of a set or assortment shall qualify as originating, provided that each of the goods in the set or assortment complies with the rule of origin established for each of the goods in this Chapter.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating if the value of all the non-originating goods used to form the set or assortment does not exceed eight per cent of the transaction value of the set or assortment, adjusted on the basis of paragraph 2 or 3 of Article 4-04 as applicable or, in the cases referred to in Article 4-04 (5), if the value of all the non-originating goods does not exceed eight per cent of the total value of the set or assortment.

3. The provisions of this Article shall take precedence over the specific rules established in Annex 4-03.

Article 4-11

Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is produced and the value of such material shall be the cost reported in the accounting records of the producer of the good.

Article 4-12

Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4-03, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good, regardless of whether they are listed separately in the invoice; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If the good is subject to a regional value-content requirement, the value of the accessories, spare parts or tools shall be taken into account as originating or

non-originating materials, as the case may be, in calculating the regional value content of the good.

3. For the purposes of paragraph 2, where the accessories, spare parts or tools are self-produced, the producer may opt to designate them as intermediate materials under Article 4-07.

Article 4-13

Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good in the Harmonized System, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4-03.

2. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. For the purposes of paragraph 2, when the packaging materials and containers are self-produced, the producer may designate them as intermediate materials under Article 4-07.

Article 4-14

Packing Materials and Containers for Shipment

Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether:

(a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 4-03; and

(b) the good satisfies a regional value-content requirement.

Article 4-15

Automotive Goods

1. For the purposes of this Article:

class of motor vehicles means any one of the following categories of motor vehicles:

(a) motor vehicles in subheading 8701.20, 8702.10. or 8702.90 (vehicles for the transport of 16 or more persons), or subheading

8704.10, 8704.22, 8704.23, 8704.32 or 8704.90 or heading 87.05 or 87.06;

(b) motor vehicles in subheading 8701.10 or 8701.30 through 8701.90;

(c) motor vehicles in subheading 8702.10 or 8702.90 (vehicles for the transport of 15 or fewer persons), or subheading 8704.21 or 8704.31; or

(d) motor vehicles in subheading 8703.21 through 8703.90;

model line means a group of motor vehicles having the same platform or model name;

model name means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler:

(a) to differentiate the motor vehicle from other motor vehicles that use the same platform design;

(b) to associate the motor vehicle with other motor vehicles that use a different platform design; or

(c) to denote a platform design;

motor vehicle means a good included in heading 87.01, 87.02, 87.03, 87.04, 87.05 or 87.06;

platform means the platform primary load-bearing structural assembly of a motor vehicle determining the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques; and

underbody means the floor pan of a motor vehicle.

2. For purposes of calculating the regional value content of a motor vehicle, the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

(a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party;

(c) the same model line of motor vehicles produced in the territory of a Party; or

(d) the same class of motor vehicles produced in the territory of a Party.

Article 4-16

Non-Qualifying Operations and Practices

A good shall not be considered to be an originating good merely by reason of:

(a) dilution with water or another substance that does not materially alter the characteristics of the good;

(b) simple operations for conserving the good during transport or storage, such as airing, refrigeration, removal of damaged parts, drying or the addition of substances;

(c) dusting, screening, classification, selection, washing, cutting;

(d) packing, repacking or packaging for retail sale;

(e) the collection of goods to make series, sets or assortments;

(f) application of marks, labels or similar distinguishing signs;

(g) cleaning, including the removal of rust, grease, paint or other coverings; and

(h) the simple collection of parts and components classified as a good under Rule 2(a) of the General Rules of Interpretation of the Harmonized System. This shall not apply to goods that were already assembled and subsequently disassembled for convenient packing, handling or shipping.

2. Any activity or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter shall not confer origin.

3. The provisions of this Article shall take precedence over the specific rules established in Annex 4-03.

Article 4-17

Transhipment and Direct Shipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 4-03 if, subsequent to that production:

(a) the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party;

(b) the good does not remain under the control or supervision of the customs authority in the territory of a non-party country.

Article 4-18

Sub-Committee on Rules of Origin

1. Notwithstanding Article 3-16(5) (Committee of Trade in Goods), the Sub-Committee on Rules of Origin shall have the following functions:

(a) cooperate in applying this Chapter in accordance with Chapter 5 (Customs Procedures);

(b) on the request of a Party, consider duly-substantiated proposals to modify the rules of origin to reflect changes in production processes or other aspects related to the determination of origin of a good;

(c) propose to the Committee on Trade in Goods modifications and additions to this Chapter, the Uniform Regulations and to matters in its sphere of competence;

(d) conduct technical studies to fulfil the objective established in Article 20-09 (Cooperation on Rules of Origin); and

(e) determine, where appropriate, the influence of interest costs incurred by a producer of one Party on the production of a good, in order to avoid undue use of such costs in determining the origin of that good.

2. Paragraph 1 shall not be construed to prevent a Party from issuing a determination of origin or an advance ruling or from taking such other action as it considers necessary.

CHAPTER 5 – CUSTOMS PROCEDURES

Article 5-01

Definitions

1. For the purposes of this Chapter:

commercial importation means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use;

customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

determination of origin means a determination as to whether a good qualifies as an originating good in accordance with Chapter 4 (Rules of Origin);

exporter means an exporter located in the territory of a Party from which the good is exported, required under this Chapter to maintain the records in the territory of that Party referred to in Article 5-06(a);

identical goods means "identical goods" as defined in the Customs Valuation Code;

importer means an importer located in the territory of a Party to which the good is imported, required under this Chapter to maintain the records in the territory of that Party referred to in Article 5-06(b);

preferential tariff treatment means the duty rate applicable to an originating good in accordance with the Tariff Reduction Programme;

producer means a "producer" as defined in Article 4-01 (Definitions), located in the territory of a Party, required maintain the records in the territory of that Party referred to in Article 5-06(a); and

value means the value of a good or material for the purposes of calculating customs tariffs or the application of Chapter 4 (Rules of Origin).

2. Unless otherwise specified in this Article, this Chapter includes the definitions established in Chapter 4 (Rules of Origin).

Article 5-02

Declaration and Certification of Origin

1. For the purposes of this Chapter, on the date on which this Agreement comes into force, the Parties shall prepare a single form for the Certificate of Origin and a single form for the declaration of origin, which may be modified by mutual agreement.

2. The Certificate of Origin referred to in paragraph 1 shall serve to certify that a good exported from the territory of one Party to the territory of the other Party qualifies as an originating good. The certificate shall remain valid for up to two years after it is signed.

3. Each Party shall require its exporters to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment.

4. Each Party shall require that:

(a) where an exporter is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(i) its knowledge of whether the good qualifies as an originating good,

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good, or

(iii) the declaration of origin referred to in paragraph 1;

(b) the declaration of origin applicable to the good to be exported shall be completed and signed by the producer of the good and given voluntarily to the exporter. The statement shall remain valid for up to two years after it is signed.

5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party is applicable to:

(a) a single importation of one or more goods; or

(b) multiple importations of identical goods within a specified period, not exceeding 12 months, set out in the certificate by the exporter.

Article 5-03

Obligations Regarding Importations

1. Each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a written statement, based on a valid Certificate of Origin, that the good qualifies as an originating good;

(b) have the certificate in its possession at the time the statement is made;

(c) provide, on the request of that Party's customs administration, a copy of the certificate; and

(d) promptly make a corrected statement and pay any duties owing where the importer has reason to believe that a certificate on which a statement was based contains information that is not correct. If the importer complies with the above obligation, it shall not be subject to penalties.

2. Each Party shall provide that when an importer in its territory fails to comply with any of the requirements established in this Chapter it shall be denied the preferential tariff treatment claimed for the good imported into the territory of the other Party.

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:

(a) a written statement that the good qualified as an originating good at the time of importation;

(b) a copy of the Certificate of Origin; and

(c) such other documentation relating to the importation of the good as that Party may require.

Article 5-04

Obligations Regarding Exportations

1 Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, shall provide a copy of the certificate or declaration to its customs administration on request.

2. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, and that has reason to believe that the certificate contains information that is not correct, shall promptly notify in writing all persons to whom the certificate or declaration was given of any change that could affect the accuracy or validity of the certificate or declaration and its customs administration. In such cases, the exporter or producer shall not be subject to penalties for having presented an incorrect certificate or declaration.

3. Each Party shall provide that a false certification or statement by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false

statement or representation. Each party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

4. The customs administration of the exporting Party shall inform the customs administration of the importing Party in writing of the notification referred to in paragraph 2.

Article 5-05

Exceptions

Provided that an importation does not form part of two or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5-02 and 5-03, the Parties shall not require a Certificate of Origin in the following cases:

(a) a commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement by the importer or exporter certifying that the good qualifies as an originating good;

(b) a non-commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish; or

(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin.

Article 5-06

Accounting Records

Each Party shall provide that:

(a) an exporter or a producer in its territory that completes and signs a certificate or declaration of origin shall maintain, for a minimum of five years after the date on which the certificate or declaration was signed, all records and documents relating to the origin of a good, including records and documents associated with:

(i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory,

(ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and

(iii) the production of the good in the form in which the good is exported from its territory; and

(b) an importer claiming preferential tariff treatment for a good imported into the Party's territory from the territory of the other Party shall maintain, for a minimum of five years after the date of importation of the good, the Certificate of Origin and all documentation relating to the importation of the good, as the importing Party may require.

Article 5-07

Origin Verifications

1. The importing Party may request information from the exporting Party on the origin of a good.

2. For purposes of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment qualifies as an originating good, a Party may, through its customs administration, conduct a verification solely by means of:

(a) written questionnaires to exporters or producers in the territory of the other Party;

(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records and documents accrediting compliance with the rules of origin in accordance with Article 5-06 (a) and observe the facilities used in the production of the materials; or

(c) such other procedure as the Parties may agree.

3. Prior to conducting a verification visit pursuant to paragraph (2)(b), the importing Party shall, through its customs administration, deliver a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer whose premises are to be visited, to the customs administration of the Party in whose territory the visit is to be conducted and, if requested by the latter, to the embassy of the other Party in the territory of the importing Party. The customs administration of the importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited.

4. The notification referred to in paragraph 3 shall include:

(a) the identity of the customs administration issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;

(e) the names, identification and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

5. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 3, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

6. Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 3, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree.

7. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 6.

8. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. The failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

9. Each Party shall, through its customs administration, where conducting a verification of origin involving a regional value content, de minimis calculation or any other provision in Chapter 4 (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable in the territory of the Party from which the good was exported.

10. After the verification visit, the customs administration shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

11. Where a verification by a Party establishes that an exporter or a producer has made a false or unsupported certification or declaration on more than one occasion that a good imported into its territory qualifies as an originating good, the importing Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter 4 (Rules of Origin).

12. Each Party shall provide that where its customs administration determines that a good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value

applied to the materials by the Party from whose territory the good was exported, the importing Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

13. A Party shall not apply a determination made under paragraph 12 to an importation made before the effective date of the determination where:

(a) the customs administration of the exporting Party has issued an advance ruling under Article 5-09 or any other ruling on the tariff classification or on the value of such materials, on which a person is entitled to rely; and

(b) such rulings were given prior to notification of the verification of origin.

Article 5-08

Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the person providing the information.

2. The confidential information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin and of customs and revenue matters, as appropriate.

Article 5-09

Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. The advance rulings shall be issued by the customs administration of the territory of the importing Party to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by them, concerning:

(a) whether a good qualifies as an originating good under Chapter 4 (Rules of Origin);

(b) whether non-originating materials used in the production of a good undergo a change in tariff classification set out in Annex 4-03 (Specific Rules of Origin);

(c) whether a good satisfies a regional value-content established in Chapter 4 (Rules of Origin);

(d) whether the method applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good for which an advance ruling is requested is suitable for determining whether the good complies with the regional value content under Chapter 4 (Rules of Origin);

(e) whether the method applied by an exporter or a producer in the territory of the other Party for reasonably allocating costs, in accordance with the methods set out in the Uniform Regulations for calculating the net cost of the good or the value of an intermediate material, is suitable for determining whether the good complies with the regional value content under the Chapter referred to;

(f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 3-08 (Goods Re-Entered after Repair or Alteration); and

(g) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:

(a) the information reasonably required to process an application for a ruling;

(b) the authority of its customs administration, at any time during the course of an evaluation of an application, to request supplemental information from the person requesting the ruling;

(c) the obligation of its customs administration to issue an advance ruling, after it has obtained all necessary information from the person requesting an advance ruling; and

(d) the obligation of its customs administration to provide a full explanation of the reasons for the advance ruling.

3. Each Party shall apply an advance ruling to importations into its territory beginning on the date of its issuance or such later date as may be specified in the ruling, unless the advance ruling is modified or revoked under paragraph 5.

4. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter 4 (Rules of Origin) regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

5. An advanced ruling may be modified or revoked in the following cases:

(a) if the ruling is based on an error:

(i) of fact,

(ii) in the tariff classification of a good or a material that is the subject of the ruling,

(iii) in the application of a regional value-content requirement under Chapter 4 (Rules of Origin), or

(iv) in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article 3-08 (Goods Re-Entered after Repair or Alteration);

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 (National Treatment and Market Access for Goods) or Chapter 4 (Rules of Origin);

(c) if there is a change in the material facts or circumstances on which the ruling is based;

(d) to conform with a modification of Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin), this Chapter or the Uniform Regulations; or

(e) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling.

6. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which it is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

7. Each Party shall provide that where its customs administration examines the regional value content of a good for which it has issued an advance ruling , it shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advance ruling;

(b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and

(c) the data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

8. Each Party shall provide that where its customs administration determines that any requirement in paragraph 7 has not been satisfied, the customs administration may modify or revoke the advance ruling as the circumstances may warrant.

9. Each Party shall provide that where its customs administration determines that an advance ruling was based on incorrect information, the person to whom it was issued shall not be subject to penalties provided the person demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based.

10. Each Party shall provide that where an advance ruling is issued to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the customs administration that issued the ruling may apply such measures as the circumstances may warrant.

11. The Parties shall provide that the person to whom an advance ruling has been issued shall only use it for as long as the facts or circumstances on which the ruling is based continue. Should they no longer apply, the person to whom the advance ruling was issued may present information to enable the administration that issued the ruling to proceed under paragraph 5.

12. No good subject to a verification of origin or to a review or appeal body in the territory of either of the Parties shall be the subject of an advance ruling.

Article 5-10

Penalties

1. Each Party shall establish or maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

2. Nothing in Article 5-03(1)(d), 5-03(2), 5-04(2) or 5-07(7) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Article 5-11

Review and Appeal

1. Each Party shall grant the same rights of review and appeal of determinations of origin and advance rulings as it provides to its importers to exporters or producers in the other Party:

(a) who complete and sign a certificate or declaration of origin for a good that has been the subject of a determination of origin pursuant to Article 5-07(10); or

(b) who has received an advance ruling pursuant to Article 5-09.

2. The rights referred to in paragraph 1 shall include access to at least one level of administrative review independent of the official or office responsible for the determination or advance ruling under review, and access to a judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review, in accordance with its domestic law.

Article 5-12

Uniform Regulations

1. The Parties shall establish, and implement through their respective laws and regulations by the date of entry into force of this Agreement, and at any time thereafter, upon express agreement of the Parties, Uniform Regulations regarding the interpretation, application and administration of Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin) and other matters as may be agreed by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Article 5-13

Cooperation

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 5-07, after the avenues for review and appeal mentioned in Article 5-11 have been exhausted;

(b) a determination of origin that the Party considers to be contrary to a ruling issued by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and

(d) an advance ruling, or a ruling modifying an advance ruling, pursuant to Article 5-09.

2. The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;

(b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information;

(c) to the extent practicable, in the storage and transmission of customs-related documentation;

(d) to the extent practicable, in the verification of origin of a good, for which purpose the customs administration of the importing Party may request the customs administration of the other Party to carry out determined operations or measures for that purpose in its territory and to issue the respective reports; and

(e) in seeking mechanisms for the detection and prevention of unlawful transhipments of goods from a non-Party.

Article 5-14

Customs Sub-Committee

1. Notwithstanding Article 3-16 (Committee on Trade in Goods), The Customs Sub-Committee shall have the following functions:

(a) endeavour to agree on:

(i) tariff classification and valuation matters relating to determinations of origin,

(ii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,

(iii) the revisions to the certificate or declaration of origin mentioned in Article 5-02,

(iv) the interpretation, application and uniform administration of Article 3-06 (Temporary Admission of Goods), 3-07 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and 3-08 (Goods Re-Entered after Repair or Alteration), Chapter 4 (Rules of Origin), this Chapter and the Uniform Regulations, and

(v) any other customs-related matter arising under this Agreement;

(b) propose to the Committee on Trade in Goods modifications or additions to Chapter 4 (Rules of Origin), this Chapter, the Uniform Regulations and customs-related matters in its sphere of competence; and

(c) examine proposals for administrative or operational modifications in customs-related matters that could affect trade flows between the Parties.

2. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling or from taking such other action as it considers necessary, pending a resolution of a matter submitted to this Sub-Committee for consideration.

CHAPTER 6 – EMERGENCY ACTION

Article 6-01

Definitions

For the purposes of this Chapter:

Agreement on Safeguards means the Agreement on Safeguards of the WTO Agreement;

competent investigating authority means "competent investigating authority" as defined in Annex 6-01;

contribute importantly means an important cause, but not necessarily the most important cause;

critical circumstances means circumstances where delay would cause damage that would be difficult to repair;

domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party;

emergency action does not include any emergency action pursuant to a proceeding instituted prior to the entry into force of this Agreement;

serious injury, threat of and causal relationship means that the provisions in that regard established in the Agreement on Safeguards will be applied;

surge means a significant increase in imports over the trend for a recent representative base period; and

transition period means the period during which a good is in the process of tariff elimination.

Article 6-02

Bilateral Emergency Actions

1. Subject to paragraphs 2 through 4, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of the other Party in such increased quantities, in relation to domestic production, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury or threat thereof:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good;

(b) increase the rate of duty on the good to a level not to exceed the lesser of

(i) the most-favoured-nation applied rate of duty in effect at the time the action is taken, and

(ii) the most favoured nation applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

(a) a Party shall, without delay, deliver to the other Party written notice of the institution of a proceeding that could result in emergency action against a good originating in the territory of the other Party;

(b) any such action shall be initiated no later than one calendar year after the date of institution of the proceeding;

(c) no action may be maintained

(i) for a period exceeding one year, or

(ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;

(d) no action may be taken by a Party against any particular good originating in the territory of the other Party more than once during the transition period; and

(e) on the termination of the action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex 3-04(3) (Tariff Reduction Programme) for the staged elimination of the tariff, would have been in effect one year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action

(i) the rate of duty shall conform to the applicable rate set out in its Schedule to Annex 3-04(3), or

(ii) the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex 3-04(3) (Tariff Reduction Programme).

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

4. The Party taking an action under this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

Article 6-03

Global Emergency Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards, except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX of the GATT 1994 and the Agreement on Safeguards shall exclude imports of a good from the other Party from the action unless:

(a) imports from the other Party account for a substantial share of total imports; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, caused by total imports.

2. In determining whether:

(a) imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered to be substantial if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the total import share of the other Party, and the level and change in the level of imports of the other Party. Imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of such imports during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. A Party taking such action, from which a good from the other Party is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good in the action in the event that the competent investigating authority determines that a surge in imports of such good undermines the effectiveness of the action.

4. A Party shall, without delay, deliver written notice to the other Party of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.

5. Neither Party may impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the other Party, as far in advance of taking the action as practicable; and

(b) that would have the effect of reducing imports of such good from the other Party below the trend of imports of the good over a recent representative base period with allowance for reasonable growth.

6. A Party taking global emergency action pursuant to this Article against goods originating in the other Party shall limit that action solely and exclusively to tariff measures.

7. The measures mentioned in paragraph 6 shall consist of increasing the rate of duty on the originating good to a level not to exceed the lesser of:

(a) the most-favoured-nation applied rate of duty in effect at the time the action is taken; and

(b) the most favoured nation applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

8. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action.

9. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 6-04

Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings shall be provided with the necessary resources to enable it to fulfil its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 6-04.

Article 6-05

Dispute Settlement in Emergency Action Matters

Neither Party may request the establishment of an arbitral panel under Article 18-06 (Request for an Arbitral Panel) regarding any emergency action that has simply been proposed.

PART THREE – TECHNICAL STANDARDS

CHAPTER 7: SANITARY AND PHYTOSANITARY MEASURES

Article 7-01

Definitions

For the purposes of this Chapter, the Parties shall use the definitions and terms established:

(a) in the Agreement on the Application of Sanitary and Phytosanitary Measures of the WTO Agreement (Agreement on Sanitary and Phytosanitary Measures);

(b) by the International Office of Epizootics (OIE);

(c) in the International Convention on Phytosanitary Protection; and

(d) by the Codex Alimentarius Commission.

Article 7-02

General Provisions

1. This Chapter applies to the principles, rules and procedures relating to the sanitary and phytosanitary measures which regulate or which may, directly or indirectly, affect trade in agricultural, fish and forest products between the Parties and other trade in plants and animals, their products and byproducts.

2. Through mutual cooperation, the Parties shall facilitate trade in agricultural, fish and forest products that present no sanitary or phytosanitary risks and undertake to prevent the introduction or spread of pests or diseases and to improve plant and animal health and food safety.

3. The competent authorities shall be the authorities with legal responsibility for enforcing compliance with the sanitary and phytosanitary requirements established in this Chapter.

4. The Parties revoke the document mentioned in Annex 7-02.

Article 7-03

Rights of the Parties

The Parties may:

(a) adopt, maintain or apply any sanitary or phytosanitary measure in their territory only to the extent necessary to protect human, animal or plant life or health, in accordance with this Chapter;

(b) apply their sanitary and phytosanitary measures only to the extent necessary to achieve an appropriate level of protection, taking into account technical and economic feasibility; and

(c) verify that plants, animals and plant and animal products for export are subject to strict sanitary and phytosanitary monitoring, certifying compliance with the requirements of the importing Party.

Article 7-04

Obligations of the Parties

1. Sanitary and phytosanitary measures shall not constitute a disguised restriction on trade or create unnecessary obstacles to trade between the Parties.

2. Sanitary and phytosanitary measures shall be based on scientific principles, be maintained only where there are sufficient grounds and be based on an appropriate risk assessment.

3. Where identical or similar conditions exist, a sanitary or phytosanitary measure shall not discriminate arbitrarily or unjustifiably between its goods and similar goods of the other Party or between the goods of the other Party and similar goods of a non-Party.

4. The Parties shall provide the necessary facilities to verify control, inspection and approval procedures and sanitary and phytosanitary programmes.

Article 7-05

International Standards and Harmonization

1. Each Party shall use international standards, guidelines or recommendations as the basis for its sanitary and phytosanitary measures, in order to harmonize them or make them compatible with those of the other Party.

2. Notwithstanding paragraph 1, the Parties may adopt a sanitary or phytosanitary measure that offers a level of protection different from that which would be achieved by measures based on an international standard, guideline or recommendation, or which is higher, if there is scientific justification.

3. To achieve closer harmonization, the Parties shall follow the guidelines of the competent international organizations: the International Convention on Phytosanitary Protection for plant health; the OIE for animal health; and the standards of the Codex Alimentarius Commission with respect to food safety and tolerance limits.

4. The parties shall also take into consideration the standards and guidelines of other international organizations of which they are members.

5. The Parties shall establish sanitary and phytosanitary harmonization systems for sampling, diagnosis, inspection and certification of animals, plants, their products and byproducts and food safety.

Article 7-06

Equivalence

1. Without reducing the appropriate level of protection, the Parties shall accept to the fullest extent possible, their sanitary and phytosanitary measures as equivalent.

2. Each Party shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if they differ from its own, providing scientific information is furnished to demonstrate that they achieve the appropriate level of protection of the other Party.

3. To establish equivalencies between sanitary and phytosanitary measures, the Parties shall adopt reasonable procedures to facilitate access to their territory for the purposes of inspection, tests and other pertinent measures.

Article 7-07

Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. The Parties shall ensure that their sanitary and phytosanitary measures are based on an adequate assessment, as appropriate to the circumstances, of the risks to human and animal life and health and to the preservation of plant health and shall prevent harmful effects of the inputs used in protection and production, taking into account the guidelines and risk assessment techniques established by the competent international organizations.

2. On assessment of risk and determination of the appropriate level of protection, the Parties shall take account of the existence of specific diseases or pests; recognition of pest- or disease-free areas and areas of low pest or disease prevalence, programmes for eradication or control, the structure and organization of sanitary and phytosanitary services, procedures for protection, surveillance, diagnoses and treatments to ensure the safety of the product.

3. In establishing their appropriate level of protection, the Parties shall take into account the objective of minimizing the negative effects on trade and, with the

purpose of achieving consistency in protection levels, shall avoid arbitrary or unjustifiable distinctions that could lead to discrimination or which constitute a disguised restriction on trade between the Parties.

4. Where a Party performs a risk assessment and concludes that the scientific information is insufficient, it may adopt a sanitary or phytosanitary measure on the basis of available information, including information from the competent international organizations as well as from sanitary or phytosanitary measures applied by the other Party. Once the necessary information becomes available, the Party shall conclude the assessment and, when warranted, shall proceed to modify the sanitary or phytosanitary measure.

Article 7-08

Recognition of Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall recognize pest- or disease-free areas and areas of low pest or disease prevalence on the basis of geographic location, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in such areas, among the main factors.

2. A Party that declares an area in its territory to be free from a given pest or disease shall demonstrate that condition objectively to the satisfaction of the other Party and give it assurances that the area shall be maintained as such, based on the protection measures adopted by the heads of the sanitary or phytosanitary services.

3. A Party interested in obtaining recognition of an area that is free from a given pest or disease shall make application to the other Party and provide it with the corresponding scientific and technical information.

4. The Party receiving the application for recognition shall decide on it within a period agreed upon in advance with the other Party and may conduct verifications with respect to inspections, tests and other procedures. In the event it refuses the application, it shall give the technical grounds for its decision in writing.

5. The Parties shall agree on specific requirements whose compliance shall permit a good produced in an area of low pest or disease prevalence to be imported, if the appropriate level of protection is provided.

Article 7-09

Control, Inspection and Approval Procedures

Pursuant to this Chapter, the Parties shall apply the provisions of Annex C of the Agreement on Sanitary and Phytosanitary Measures relating to control, inspection and approval procedures, including systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

Article 7-10

Transparency

Each Party, when proposing the adoption or modification of a sanitary or phytosanitary measure for general application on the central or federal level, shall notify through its competent authorities:

(a) the adoption and modification of such measures and facilitate information on them, in accordance with Annex B of the Agreement on Sanitary and Phytosanitary Measures, and shall make the pertinent adaptations;

(b) changes or modifications in sanitary or phytosanitary measures with a significant effect on trade between the Parties, no less than 60 days prior to the entry into force of the new provision, to permit the other Party to comment. In emergency situations the term shall be waived, in accordance with Annex B of the Agreement on Sanitary and Phytosanitary Measures;

(c) changes in the field of animal health and the appearances of exotic diseases and diseases of List A of the OIE, within 24 hours after detection of the problem;

(d) changes in the field of plant health, such as the appearance of quarantine pests or the spread of pests under official control, within 72 hours after verification; and

(e) findings of epidemiological importance and significant changes in relation to diseases and pests not included in (b) or (c) that could affect trade between the Parties, within a maximum of 10 days.

Article 7-11

Committee on Sanitary and Phytosanitary Measures

1. The Parties establish a Committee on Sanitary and Phytosanitary Measures Committee comprised of representatives of each of them, with responsibilities for sanitary and phytosanitary matters. The Committee shall be established within 30 days after this Agreement comes into force.

2. The Committee shall coordinate and apply the provisions of this Chapter, oversee the fulfilment of its objectives, facilitate consultations or negotiations on specific sanitary and phytosanitary matters and issue the pertinent recommendations.

3. The Committee's functions shall include:

(a) establishing adequate terms and conditions for the coordination and expeditious solution of matters submitted to it;

(b) immediately examining possible discrepancies that may arise in the application of this Chapter;

(c) promoting the facilities needed for the training and specialization of technical staff; and

(d) promoting cooperation and exchanges of technical staff, including cooperation in the development, application and observance of sanitary or phytosanitary measures.

4. The Committee shall establish the following sub-committees, inter alia: animal health, plant health, food safety, fisheries and agricultural chemicals. The members of the sub-committees shall be appointed by the competent authorities in their respective fields.

5. The sub-committees' functions shall include:

(a) preparing terms of reference for activities in their spheres of competence and reporting on their results to the Committee;

(b) establishing specific agreements on matters of interest involving greater technical and operational detail, for presentation to the Committee; and

(c) establishing mechanisms for expeditious exchanges of information in response to consultations by the Parties.

6. The Committee shall convene once a year, unless otherwise agreed, and shall report on the results of its work to the Commission. The sub-committees shall convene at least once a year, or as often as necessary, depending on the requirements of their programme of activities.

Article 7-12

Technical Consultations

1. Nothing in the Chapter shall prevent a Party from consulting the other Party when it has questions about the application or interpretation of its content.

2. Where one Party considers that a sanitary or phytosanitary measure of the other Party is interpreted or applied in a manner that is inconsistent with the provisions of this Chapter, it shall be required to demonstrate that inconsistency.

3. Where one Party requests consultations and notifies the Committee of its request, the Committee shall facilitate the consultations and may remit them to an

ad hoc working group or some other forum for advice or non-binding technical recommendations.

4. Where the Parties have held consultations under this Article without achieving satisfactory results, those consultations, if agreed by the Parties, shall constitute the consultations envisaged in Article 18-04 (Consultations).

Article 7-13

Relation to Other Chapters

The provision of Article XX(b) of the GATT 1994, included in Article 19-02(1) (General Exceptions), does not apply to any sanitary or phytosanitary measure.

CHAPTER 8 - STANDARDS-RELATED MEASURES

Article 8-01

Definitions

For the purposes of this Chapter:

approval procedure means any registration, notification or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed or used for a stated purpose or under stated conditions;

assessment of risk means evaluation of the potential for adverse effects;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation and approval, separately or in different combinations;

international standard means a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing body means a standardizing body whose membership is open to the relevant bodies of at least all the parties to the Agreement on Technical Barriers to Trade, including the International Organization for Standardization, the International Electrotechnical Commission, Codex Alimentarius Commission, the World Health Organization, the United Nations Food and Agriculture Organization, the International Telecommunication Union, or any other body that the Parties designate;

legitimate objective includes the guarantee for safety or protection of human, animal or plant life or health, the environment, or the prevention of practices which

may mislead or deceive consumers, including issues related to identifying goods or services, considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification;

make compatible means bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent or have the effect of permitting goods or services to be used in place of one another or fulfil the same purpose;

services means any of the cross-border services sectors or subsectors set out in Annex 8-01;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

standardizing body means a body having recognized activities in standardization;

standards-related measure means a standard, technical regulation or conformity assessment procedure;

TBT Agreement means the Agreement on Agreement on Technical Barriers to Trade, which forms part of the WTO Agreement; and

technical regulation means a document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method.

Article 8-02

General Provision

Apart from the provisions of the TBT Agreement, the Parties shall apply the provisions of this Chapter.

Article 8-03

Scope and Coverage

1. This Chapter applies to the standards-related measures of the Parties and measures that may, directly or indirectly, affect trade in goods or services between them.

2. This Chapter does not apply to sanitary and phytosanitary measures, which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

Article 8-04

Basic Rights and Obligations

1. Each Party may, in pursuing its legitimate objectives, establish the levels of protection that it considers appropriate and may develop, adopt, apply or maintain any standards-related measure to ensure fulfilment of its legitimate objectives, and measures for the application of and compliance with standards-related measures, including approval procedures.

2. Each Party shall comply with this Chapter and adopt measures to ensure compliance and, within its ability, measures to that end with respect to non-governmental standardization organizations that are duly accredited in its territory.

3. With respect to standards and technical regulations, each Party shall accord the goods and service providers of the other Party national treatment and treatment no less favourable than that it accords to similar goods and service providers of a non-Party country.

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. To that end, standards-related measures shall not restrict trade more than is necessary to fulfil a legitimate objective, taking into account the risks that not fulfilling it would create. An unnecessary obstacle to trade shall not be deemed to be created where:

(a) the demonstrable purpose of the measure is to achieve a legitimate objective;

(b) it conforms to an international standard; and

(c) the measure does not operate to exclude goods of the other Party that meet that legitimate objective.

5. Each Party shall use existing international standards or standards whose adoption is imminent as the basis for its own standards-related measures, unless such standards are not an effective or appropriate means of fulfilling its legitimate objectives.

Article 8-05

Compatibility

1. Recognizing the central role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter and the TBT

Agreement, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of either Party under this Chapter, and taking into account international standardization activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures.

3. A Party shall, on request of the other Party, seek as far as practicable through appropriate measures, to promote the compatibility of a specific standard that is maintained in its territory with the standards maintained in the territory of the other Party.

4. On the express and written request of a Party, setting forth its reasons, the other Party shall give favourable consideration to the possibility of accepting technical regulations of that Party as equivalents, even if they differ from its own, provided that, in cooperation with that Party, it is convinced that the regulations comply with the legitimate objectives of its own regulations.

5. On the request of a Party, the other Party shall inform it in writing of its reasons for not accepting a technical regulation as equivalent.

Article 8-06

Assessment of Risk

1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk. In conducting an assessment, a Party may take into account, among other factors relating to a good or service:

(a) assessments of risks performed by international standardization organizations;

(b) available scientific evidence or technical information;

(c) intended end use;

(d) processes or production methods provided they influence the nature of the end good or service;

(e) operating, inspection, sampling or testing processes or methods; or

(f) environmental conditions.

2. Where a Party establishes a level of protection that it considers appropriate to achieve its legitimate objectives and conducts an assessment of risk, it should avoid arbitrary or unjustifiable distinctions between similar goods or services in the level of protection it considers appropriate, where the distinctions:

(a) result in arbitrary or unjustifiable discrimination against goods or service providers of the other Party;

(b) constitute a disguised restriction on trade between the Parties; or

(c) discriminate between similar goods or services for the same use under the same conditions that pose the same level of risk and provide similar benefits.

3. Where a Party conducting an assessment of risk determines that available scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional technical regulation on the basis of available relevant information and in accordance with the TBT Agreement. The Party shall, within a reasonable period after information sufficient to complete the assessment of risk is presented to it, complete its assessment, review and, where appropriate, revise the provisional technical regulation in the light of that assessment.

4. A Party shall provide the other Party upon request with documentation on its risk-assessment processes and the factors it takes into account in conducting the assessment and in establishing the level of protection it considers appropriate in accordance with Article 8-04.

Article 8-07

Conformity Assessment Procedures

1. Conformity assessment procedures shall be prepared, adopted and applied so as to grant access for goods and services originating in the territory of the other Party under conditions no less favourable than those accorded to suppliers of like good or service of the Party or of a non-Party in a comparable situation.

2. With respect to its conformity assessment procedures, each Party shall ensure that:

(a) procedures are initiated and completed as expeditiously as possible, in non-discriminatory order;

(b) the normal processing period for each such procedure is published or the anticipated processing period is communicated to the applicant upon request;

(c) when receiving an application, the competent body or authority promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant

so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(d) information requirements are limited to what is necessary to assess conformity and determine fees;

(e) the confidentiality of information about a good or service originating in the territory of the other Party arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for a domestic good or service and in such a manner that legitimate commercial interests are protected;

(f) any fees imposed for assessing the conformity of a good or service originating in the territory of the other Party are equitable in relation to any fees chargeable for assessing the conformity of like goods or services of national origin, taking into account communication, transportation and other costs arising from differences between the location of facilities of the applicant and the conformity assessment body;

(g) the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

(h) whenever specifications of a good or service are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified good or service is limited to what is necessary to determine whether adequate confidence exists that the good or service still meets the technical regulations or standards concerned; and

(i) a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

3. To facilitate trade, a Party shall give sympathetic consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. Each Party shall, as far as practicable, accept the results of conformity assessment procedures in the other Party, provided they offer satisfactory guarantees, equivalent to those provided by the procedures carried out by the accepting Party in its territory or which are carried out in its territory and whose results it accepts, that the pertinent good or service conforms to the applicable technical regulation or standard adopted or maintained in the territory of that Party.

5. Before accepting the results of a conformity assessment procedure, as provided in paragraph 4, and with the aim of enhancing the sustained reliability of the results of the conformity assessment of each Party, the Parties may consult on

aspects such as the technical capacity of conformity assessment bodies, including verified conformity with relevant international standards through methods such as accreditation.

6. Recognizing that this should be to the mutual advantage of the Parties, each Party shall accredit, approve or otherwise recognize the conformity assessment bodies in the territory of the other Party under conditions no less favourable than it accords to such bodies in its territory.

Article 8-08

Approval Procedures

Each Party shall apply the pertinent provisions of Article 8-07(2) to its approval procedures, with the appropriate modifications.

Article 8-09

Notification, Publication and Transparency

1. A Party proposing to adopt or modify a technical regulation or a conformity assessment procedure applied to a technical regulation, except where the urgent circumstances established in Articles 2.10 and 5.7 of the TBT Agreement exist, shall publish a notice and notify the other Party in writing of the proposed measure at least 60 days prior to the adoption or modification of the measure, other than a law, as to enable interested persons to become acquainted with it.

2. Where a standardizing body of one Party proposes to adopt or modify a standard or conformity assessment procedure applied to a standard, that Party shall publish a notice and notify the other Party in writing of the proposed measure at an early appropriate stage, to enable interested persons to become acquainted with it.

3. The Parties shall make notifications under paragraphs 1 and 2 in accordance with the formats established in the TBT Agreement or such formats as are agreed to by the Parties.

4. Each Party shall notify the other annually of its standardization plans and programmes.

5. Each Party shall keep a list of its standardization measures which, upon request, shall be made available to the other Party, and shall ensure that where copies of documents are requested by the other Party or by interested persons of that Party, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

6. Where a Party allows non-governmental persons in its territory to be present during the process of development of standards-related measures, it shall also allow non-governmental persons from the territory of the other Party to be present. The non-governmental persons of the territory of the other Party shall be permitted to

express opinions and make comments on the standardization measure being developed.

7. For the purposes of this Article, the authorities named in Annex 8-09 shall be responsible for making the notifications.

Article 8-10

Limitations on the Provision of Information

Nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article 8-11

Committee on Standards-Related Measures

1. The Parties hereby establish a Committee on Standards-Related Measures, comprising representatives of each Party, in accordance with Annex 8-11.

2. The Committee's functions shall include:

(a) monitoring the implementation, compliance and administration of this Chapter;

(b) considering particular matters on standardization-related measures and measurement systems of the other Party or measures related thereto, when a Party has questions regarding the interpretation or application of this Chapter, in order to provide technical advice or non-binding recommendations;

(c) facilitating the process by which the Parties make compatible their standards-related measures and measurement systems;

(d) providing a forum for the Parties to consult on issues relating to standards-related measures and measurement systems;

(e) promoting technical cooperation between the Parties;

(f) helping to develop and strengthen the standardization, technical regulation, conformity assessment and measurement systems of the Parties;

(g) reporting annually to the Commission on the application of this Chapter;

(h) facilitating the negotiation of agreements on mutual recognition;

(i) on the request of a Party, evaluating and recommending to the Commission for approval, the inclusion of specific services sectors or subsectors in Annex 8-01, such inclusion to be made through a decision of the Commission; and

(j) establishing relevant sub-committees and determining the scope of their activities and mandate.

3. The Committee shall meet at least once a year, unless the Parties otherwise agree.

4. The Parties establish a Telecommunications Standards Sub-Committee comprised of representatives of each Party. The Sub-Committee's functions shall be to:

(a) develop a work programme, within twelve months of the date of entry into force of this Agreement, including a timetable, for making compatible to the greatest extent possible, the standards-related measures of the Parties for authorized equipment as defined in Chapter 12 (Telecommunications);

(b) address other matters respecting the standardization of telecommunications equipment or services and such other matters as it considers appropriate; and

(c) take into account relevant work carried out by the Parties in other fora, and that of non-governmental standardizing bodies.

Article 8-12

Technical Cooperation

1. A Party shall, on the request of the other Party:

(a) provide to that Party information and technical assistance on mutually agreed terms and conditions to enhance that Party's standards-related measures, and related activities, processes and systems; and

(b) provide to that Party information on its technical cooperation programmes regarding standards-related measures relating to specific areas of interest.

2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territory of the other Party, such as through membership in international standardizing bodies.

3. To the extent practicable, each Party shall inform the other Party of the international agreements, conventions or programmes it has entered into on standardization measures.

PART FOUR - INVESTMENT, SERVICES AND RELATED MATTERS

CHAPTER 9: INVESTMENT

Section A - Definitions

Article 9-01

Definitions

For the purposes of this Chapter:

disputing investor means an investor that makes a claim under Section C;

disputing parties means the disputing investor and the disputing Party;

disputing Party means a Party against which a claim is made under Section C;

disputing party means the disputing investor or the disputing Party;

enterprise means an "enterprise" as defined in Article 2-01 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch located in the territory of a Party and carrying out business activities there;

equity or debt securities includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

existing means in effect on 14 January 1997;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

G7 currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States of America;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, 18 March 1965;

ICSID means the International Centre for Settlement of Investment Disputes;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, 30 January 1975;

investment means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise:

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a State or a State enterprise;

(d) a loan to an enterprise:

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a State enterprise;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of the other Party to economic activity, such as under:

(i) contracts involving the presence of an investor's property in the territory of the other Party, including concessions or construction or turnkey contracts, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h); or

(k) with respect to "loans" and "debt securities" referred to in subparagraphs (c) and (d) as it applies to investors of the other Party, and investments of such investors, in financial institution in the Party's territory

(i) a loan or debt security issued by a financial institution that is not treated as regulatory capital by the Party in whose territory the financial institution is located,

(ii) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (i), and

(iii) a loan to, or debt security issued by, a Party or a State enterprise thereof;

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a non-Party means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;

investor of a Party means a Party or State enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

person of a Party means "person of a Party" as defined in Chapter 2 (General Definitions) except that with respect to Article 9-02(3) and (4), "person of a Party" does not include a branch of an enterprise of a non-Party;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 9-21 or 9-27; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Section B – Investment

Article 9-02

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) investments of investors of the other Party in the territory of the Party; and

(c) with respect to Articles 9-07 and 9-15, all investments in the territory of the Party.

2. This Chapter applies to investments existing on the date this Agreement enters into force and to investments made or acquired after that date.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory.

4. The Parties agree:

(a) notwithstanding paragraph 3, Articles 9-10, 9-11 and Section C for breaches by a Party of Articles 9-10 and 9-11 shall apply to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory, which have obtained the appropriate authorization; and

(b) to seek further liberalization as set out in Annex 20-08(a) (Future Negotiations).

5. A Party has the right to exclusively perform the economic activities set out in Annex III and to refuse to authorize investments in those activities. Should a Party permit an investment to be made in an activity set out in Annex III, that investment shall be protected under this Chapter.

6. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health and child care, in a manner that is not inconsistent with this Chapter.

Article 9-03

National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that state to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of the other Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 9-04

Most-Favoured Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 9-05

Standard of Treatment

Each Party shall accord to investors of the other Party and the investments of investors of the other Party the better of the treatment required by Articles 9-03 and 9-04.

Article 9-06

Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 9-09(6)(b), each Party shall accord to investors of the other Party, and to investments of investors of the other Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9-03 but for Article 9-09(6)(b).

Article 9-07

Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 9-03 and 9-04 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.

7. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties.

Article 9-08

Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 9-09

Reservations and Exceptions

1. Articles 9-03, 9-04, 9-07 and 9-08 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the national or federal or state level, as pertinent, as set out in its Schedule to Annex I or III, or

(ii) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 9-03, 9-04, 9-07 and 9-08.

2. Articles 9-03, 9-04, 9-07 and 9-08 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor

of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 9-03 and 9-04 do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement, as specifically provided for in that agreement.

5. Article 9-04 does not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex IV.

6. Articles 9-03, 9-04 and 9-08 do not apply to:

(a) procurement by a Party or a State enterprise; or

(b) subsidies or grants provided by a Party or a State enterprise, including government-supported loans, guarantees and insurance.

7. The provisions of:

(a) Article 9-07(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes;

(b) Article 9-07(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement by a Party or a State enterprise; and

(c) Article 9-07(3)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 9-10

Transfers

1. Except as provided in Annex 9-10, each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 9-11; and

(e) payments arising under Section C.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal offences;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgements in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 9-11

Expropriation and Compensation

1. Neither Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 9-06(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 9-10.

7. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

Article 9-12

Special Formalities and Information Requirements

1. Nothing in Article 9-03 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as a requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protection afforded by the Party pursuant to this Chapter.

2. Notwithstanding Articles 9-03 or 9-04, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing

in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 9-13

Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 9-14

Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 16-04 (Notification and Provision of Information) and 18-04 (Consultations), a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 9-15

Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party

should 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 its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

Section C - Settlement of Disputes between a Party and an Investor of the Other Party

Article 9-16

Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 18 (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 9-17

Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section B or Article 14-04(2) (State Enterprises), or

(b) Article 14-03(4)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section B,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor incurred loss or damage.

Article 9-18

Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section B or Article 14-04(2) (State Enterprises), or

(b) Article 14-03(4)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section B,

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 9-17 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 9-21, the claims should be heard together by a Tribunal established under Article 9-27, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 9-19

Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 9-20

Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 9-18, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 9-21

Submission of a Claim to Arbitration

1. Except as provided in paragraphs 2 and 3, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. Where a claim is submitted under Article 9-17, the investor and the enterprise that is a juridical person owned or controlled directly or indirectly by the investor shall have not submitted the same claim to a court or administrative tribunal of the disputing party.

3. Where a claim is submitted under Article 9-18, both the investor and the enterprise that is a juridical person owned or controlled directly or indirectly by the investor, shall have not submitted the same claim to a court or administrative tribunal of the disputing Party.

4. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 9-22

Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 9-17 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive

their right to initiate or continue before any administrative tribunal or court under the law of the disputing Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 9-17, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 9-18 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 9-18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 9-21(3) shall not apply.

Article 9-23

Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement.

Article 9-24

Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 9-27, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

Article 9-25

Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a Tribunal, other than a Tribunal established under Article 9-27, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of a Party. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either of the Parties.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 30 presiding arbitrators meeting the qualifications of the Convention and rules referred to in Article 9-21 and experienced in international law and investment matters. The roster members shall be appointed by mutual agreement.

Article 9-26

Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 9-25(3) or on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 9-17 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 9-18(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 9-27

Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 9-21 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order, assume jurisdiction over, and hear and determine:

(a) all or part of the claims together; or

(b) one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall deliver to the disputing Party or disputing investors against which the order is sought a copy of the request.

5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 9-25(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either Party. The Secretary-General shall appoint the two other members from the

roster referred to in Article 9-25(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 9-17 or 9-18 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 9-21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 9-21 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 9-28

Notice

1. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

(a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;

(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

2. A disputing Party shall deliver to the Secretariat a copy of a request made under Article 9-27(3):

(a) within 15 days of receipt of the request, in the case of a request made by a disputing investor; and

(b) within 15 days of making the request, in the case of a request made by the disputing Party.

3. A disputing Party shall deliver to the Secretariat a copy of a request made under Article 9-27(6) within 15 days of receipt of the request.

4. The Secretariat shall maintain a public register of the documents referred to in paragraphs 1, 2 and 3.

5. A disputing Party shall deliver to the other Party:

(a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and

(b) copies of all pleadings filed in the arbitration.

Article 9-29

Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 9-30

Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party, a copy of:

(a) the evidence that has been tendered to the Tribunal; and

(b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 9-31

Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 9-32

Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 9-33

Interpretation of Annexes

1. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to Article 9-32(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 9-34

Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 9-35

Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 9-17 or 9-18. For purposes of this Article, an order includes a recommendation.

Article 9-36

Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. A Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraphs 1 and 2, where a claim is made under Article 9-18(1):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not order a Party to pay punitive damages.

Article 9-37

Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; or

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 18-06 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 9-38

General

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules has been received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 9-38(2).

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defence, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. Annex 9-38(4) applies to publication of an award.

Article 9-39

Exclusions

1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter 18 (Dispute Settlement) to other actions taken by a Party pursuant to Article 19-03 (National Security), a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment pursuant to that Article, shall not be subject to such provisions.

2. The dispute settlement provisions of this Section and of Chapter 18 (Dispute Settlement) shall not apply to the matters referred to in Annex 9-39.

Section D – Committee on Investment and Cross-Border Trade in Services

Article 9-40

Committee on Investment and Cross-Border Trade in Services

1. The Parties establish a Committee on Investment and Cross-Border Trade in Services comprising representatives of each Party, in accordance with Annex 9-40.

2. The Committee shall convene at least once a year and whenever so requested by either Party or the Commission.

3. The Committee's functions shall include:

(a) monitoring the implementation and administration of this Chapter and of Chapter 10 (Cross-Border Trade in Services);

(b) discussing matters relating to cross-border services and bilateral investments; and

(c) examining bilaterally issues related to these matters discussed in other international fora.

CHAPTER 10: CROSS-BORDER TRADE IN SERVICES

Article 10-01

Definitions

1. For the purposes of this Chapter:

cross-border provision of a service or cross-border trade in services means the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 9-01 (Definitions), in that territory;

enterprise means an "enterprise" as defined in Article 2-01 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

existing means in effect on 14 January 1997;

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

(a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

service provider of a Party means a person of a Party that seeks to provide or provides a service; and

specialty air services means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.

2. A reference to a national or federal or state government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.

Article 10-02

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures respecting:

(a) the production, distribution, marketing, sale and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a service;

(d) the presence in its territory of a service provider of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. For the purposes of this Chapter, measures adopted or maintained by a Party are measures adopted or maintained by:

(a) the national or federal or state governments;

(b) any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.

3. This Chapter does not apply to:

(a) cross-border trade in financial services;

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service,

(ii) specialty air services, and

(iii) computerized reservation systems;

(c) procurement by a Party or a State enterprise; or

(d) subsidies or grants provided by a Party or a State enterprise, including government-supported loans, guarantees and insurance.

4. Nothing in this Chapter shall be construed to:

(a) impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or

(b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 10-03

National Treatment

1. Each Party shall accord to service providers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a state, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that state to service providers of the Party of which it forms a part.

Article 10-04

Most-Favoured-Nation Treatment

Each Party shall accord to service providers of the other Party treatment no less favourable than it accords, in like circumstances, to service providers of a non-Party country.

Article 10-05

Standard of Treatment

Each Party shall accord to service providers of the other Party the better of the treatment required by Articles 10-03 and 10-04.

Article 10-06

Local Presence

Neither Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 10-07

Reservations

1. Articles 10-03, 10-04 and 10-06 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the national or federal or state level, as set out in its Schedule to Annex I, or

(ii) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles10-03, 10-04 and 10-06.

2. Articles 10-03, 10-04 and 10-06 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article 10-08

Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains at the national or federal or state level.

2. Each Party shall notify the other Party of any quantitative restriction that it adopts after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex V.

3. The Parties shall periodically, but in any event at least every two years, endeavour to negotiate the liberalization or removal of the quantitative restrictions set out in Annex V pursuant to paragraphs 1 and 2.

Article 10-09

Future Liberalization

Through future negotiations to be arranged by the Commission, the Parties shall seek further liberalization in the different services sectors, with a view to eliminating the remaining restrictions in the Schedules mentioned in Article 10-07(1) and (2).

Article 10-10

Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex VI its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 10-11

Procedures

The Parties shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule:

(i) commitments pursuant to Article 10-10,

(ii) amendments of measures referred to in Article 10-07(1) and (2), and

(iii) quantitative restrictions in accordance with Article 10-08; and

(b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 10-12

Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to trade, each Party shall endeavour to ensure that any such measure:

(a) is based on objective and transparent criteria, such as competence and the ability to provide a service;

(b) is not more burdensome than necessary to ensure the quality of a service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licences or certifications obtained in the territory of the other Party or of a non-Party:

(a) nothing in Article 10-4 shall be construed to require the Party to accord such recognition to education, experience, licences or certifications obtained in the territory of the other Party; and

(b) the Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licences or certifications obtained in the other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Each Party shall, after the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of the other Party. Where a Party does not comply with this obligation with respect to a particular sector, the other Party may, in the same sector and for such period as the non-complying Party maintains its requirement, solely have recourse to adopting or maintaining an equivalent requirement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.

5. Annex 10-12 establishes procedures for the recognition of education, experience and other standards and requirements governing professional service providers.

Article 10-13

Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 16-04 (Notification and Provision of Information) and 18-04 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of the other Party.

Article 10-14

Committee on Investment and Cross-Border Trade in Services

The Committee on Investment and Cross-Border Trade in Services shall perform the functions established in Article 9-40 (Committee on Investment and Cross-Border Trade in Services).

CHAPTER 11: AIR TRANSPORTATION SERVICES

Article 11-01

Definitions

For the purposes of this Chapter, Convention means the Convention on Air Transportation between the Government of the Republic of Chile and the Government of the United Mexican States signed on 14 January 1997, or its successor.

Article 11-02

Scope and Coverage

Except as provided in this Chapter, Chapter 17 (Administration of the Agreement), Chapter 19 (Exceptions) and Chapter 20 (Final Provisions), this Agreement does not apply to air transportation services and the Parties shall abide by the provisions of the Convention.

Article 11-03

Consolidation

No modification made in accordance with Article 17 (Consultation and Modification) of the Convention shall restrict rights with respect to the situation existing in the Convention.

Article 11-04

Dispute Settlement

1. Disputes between the Parties regarding the interpretation or application of this Chapter or the Convention shall be settled in accordance with Chapter 18 (Dispute Settlement) of this Agreement, with the modifications established in this Article.

2. Where one Party claims that a dispute has arisen under paragraph 1, Article 18-09 (Panel Selection) shall be applicable, except that:

(a) the arbitral panel shall comprise three members;

(b) all members of the arbitral panel shall comply with the requisites established in (c) and (d);

(c) the Parties shall establish by consensus, no later than 1 January 1999, a roster of up to 10 individuals, who are willing and able to serve as panellists in air transportation services disputes. The roster may be modified every three years; and

(d) the roster members shall:

(i) have specialized knowledge of or practical experience in air transportation services,

(ii) be chosen strictly on the basis of their objectivity, reliability and sound judgement, and

(iii) comply with the requirements established in Article 18-07(2)(c) and (d) (Roster).

3. Until such time as the roster referred to in Article 11-04(2)(c) is established, the Parties shall apply Article 20-10(3) (Revocations and Transitory Provisions).

Article 11-05

Committee on Air Transportation

1. The Parties establish a Committee on Air Transportation comprised of the representatives of each Party mentioned in Annex 11-05.

2. The Committee shall convene at least once a year to ensure the application of this Chapter and shall prepare a report to be presented to the Free Trade Commission.

3. The Committee may discuss other matters related to scheduled and non-scheduled air transportation between the Parties and any other appropriate matter.

Article 11-06

Convention

The Parties set aside the following provisions of the Convention:

(a) those relating to dispute settlement, including Article 18 (Dispute Settlement); and

(b) Article 20 (Termination).

Article 11-07

Entry into Force

The rights and obligations of this Chapter shall enter into force when the Parties have complied with Article 21 (Entry into Force) of the Convention.

CHAPTER 12: TELECOMMUNICATIONS

Article 12-01

Definitions

For the purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means "conformity assessment procedure" as defined in Article 8-01 (Definitions) and includes the procedures referred to in Annex 12-01;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party maintains or is designated as the sole provider of public telecommunications transport networks or services;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private telecommunications transport network means a telecommunications transport network that is used exclusively for intracorporate communications or between predetermined individuals;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signalling or data information;

public telecommunications transport network means the telecommunications transport network used to commercially operate telecommunications services to meet the needs of the public generally, not including the terminal equipment of customers or telecommunications transport networks beyond the network termination point;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standards-related measure means a "standards related measure" as defined in Article 8-01 (Definitions);

telecommunications means the transmission, emission or reception of signs, signals, written words, images, sounds and information of any type by wire, radio, optical means or other electromagnetic systems;

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming; and

terminal equipment means any digital or analogue device capable of processing, receiving, switching, signalling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Article 12-02

Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including access and use by such persons operating private networks for intracorporate communications;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 12-03

Access to and Use of Public Telecommunications Transport Networks and Services

1. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favourable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

2. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in the other paragraphs of this Article.

3. Subject to paragraphs 7 and 8, each Party shall ensure that such persons are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons, as established in Annex 12-03;

(c) perform switching, signalling and processing functions; and

(d) use operating protocols of their choice, in accordance with the technical plans of each Party.

4. Each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services. Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

5. Each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of the other Party.

6. Further to Article 19-02 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

7. Further to Article 12-05, each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

8. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

(a) a restriction on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person; and

(d) a licensing, permit, concession, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 12-04

Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) any licensing, permit, concession, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. Neither Party may require a person providing enhanced or value-added services to:

(a) provide those services to the public generally;

(b) cost-justify its rates;

(c) file a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anti-competitive under its law; or

(b) a monopoly to which Article 12-06 applies.

Article 12-05

Standards-Related Measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction;

(e) ensure users' safety and access to public telecommunications transport networks or services; or

(f) ensure efficient use of the electromagnetic spectrum.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not

authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than eighteen months after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

7. The Sub-Committee on Telecommunications Standards shall perform the functions set out in Article 8-11(4) (Committee on Standards-Related Measures).

Article 12-06

Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anti-competitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and

the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anti-competitive conduct, each Party shall adopt or maintain effective measures, such as:

(a) accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favourable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 12-07

Transparency

Further to Article 16-03 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration, certification, licensing or concession requirements.

Article 12-08

Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 12-09

Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 12-10

Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programmes and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programmes.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.
3.

CHAPTER 13: TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 13-01

Definitions

For the purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities;

citizen means “citizen” as defined in Article 2-01 (Definitions of General Application) but does not include permanent residents; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

Article 13-02

General Principles

Further to Article 1-02 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article 13-03

General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 13-02 and, in particular, shall apply those measures expeditiously so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavour to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 13-04

Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 13-04 and 13-04(1).

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the other Party of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 13-05

Provision of Information

1. Further to Article 16-03 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 13-06

Temporary Entry Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials, for the purpose of considering implementation and administration of this Chapter and measures of mutual interest.

2. The Working Group shall meet at least once each year to consider:

(a) the implementation and administration of this Chapter;

(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(c) the waiving of labour certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 13-04; and

(d) proposed modifications of or additions to Annex 13-04 and 13-04(1) which, by consensus, shall be presented to the Commission in accordance with Article 17-01(3)(c) (Free Trade Commission).

Article 13-07

Dispute Settlement

1. A Party may not initiate proceedings under Article 18-05 (Commission - Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 13-03 unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 13-08

Relation to Other Chapters

Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 17 (Administration of the Treaty), 18 (Dispute Settlement) and 20 (Final Provisions) and Article 16-02 (Contact Points), 16-03 (Publication), 16-04 (Notification and Provision of Information) and 16-05 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

CHAPTER 14: COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Article 14-01

Definitions

For the purposes of this Chapter:

commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

designate means to establish, designate or authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

discriminatory provision includes treating:

(a) a parent, a subsidiary or other enterprise with common ownership more favourably than an unaffiliated enterprise, or

(b) one class of enterprises more favourably than another, in like circumstances;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

State enterprise means "State enterprise" as defined in Article 2-01 (Definitions of General Application), except as set out in Annex 14-01.

Article 14-02

Competition Law

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement. To this end, the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, communication, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.

3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

4. No investor may have recourse to arbitration under Section C (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter 9 (Investment) for any matter arising under this Article.

Article 14-03

Monopolies and State Enterprises

1. For the purposes of this Article:

delegation includes a legislative grant, and a government order, directive or other act transferring to the monopoly, or authorizing the exercise by the monopoly of, governmental authority; and

maintain means established prior to the date of entry into force of this Agreement and existing on that date.

2. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

3. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavour to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 18-02 (Nullification and Impairment).

4. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licences, approve commercial transactions or impose quotas, fees or other charges;

(b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale. Differences in pricing between classes of customers, between affiliated and non-affiliated firms, and cross-subsidization are not in themselves inconsistent with the provision; rather, they are subject to this subparagraph when they are used as instruments of behaviour contrary to competition law;

(c) provides non-discriminatory treatment to investments of investors, to goods and to service providers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anti-competitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of the other Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

5. Paragraph 4 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or use in the production of goods or the provision of services for commercial sale.

6. Nothing in this Article shall be construed to prevent a monopoly from charging different prices in different geographic markets, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions in those markets.

Article 14-04

State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a State enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any State enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapter 9 (Investment) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licences, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any State enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of the other Party.

Article 14-05

Committee on Trade and Competition

The Commission shall establish a Committee on Trade and Competition comprising representatives of each Party, which shall convene a least once a year. The Committee shall report and make recommendations to the Commission on matters regarding the relation between competition laws and policies and trade in the free trade zone.

PART FIVE – INTELLECTUAL PROPERTY

CHAPTER 15

Section A – Definitions and General Provisions

Article 15-01

Definitions

For the purposes of this Chapter:

Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 24 July 1971;

Geneva Convention means the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, adopted in Geneva on 29 October 1971;

Paris Convention means the Paris Convention for the Protection of Industrial Property, Stockholm Act of 14 July 1967; and

Rome Convention means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted in Rome on 26 October 1961.

Article 15-02

Protection of Intellectual Property Rights

1. The intellectual property rights regulated in this Chapter are the copyrights, related rights, trademarks and designations of origins referred to in this Chapter.

2. Each Party shall grant in its territory to nationals of the other Party adequate and effective protection of the intellectual property rights referred to in this Chapter and ensure that measures to enforce those rights do not themselves become barriers to legitimate trade.

3. Each Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 15-03

Relation to Other Intellectual Property Agreements

1. No provision of this Chapter, relating to intellectual property rights, shall derogate from existing obligations that the Parties may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Geneva Convention.

2. For the purpose of granting adequate and effective protection and enforcement of the intellectual property rights referred to in this Chapter, the Parties shall give effect to, at a minimum, the substantive provisions of the Paris Convention, the Berne Convention, the Rome Convention and the Geneva Convention.

Article 15-04

National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection and enforcement of the intellectual property rights referred to in this Chapter, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Geneva Convention.

2. Each Party may avail itself of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such exemptions:

(a) are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions this Chapter; and

(b) are not applied in a manner that would constitute a disguised restriction on trade.

3. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

Article 15-05

Most Favoured-Nation Treatment

With regard to the protection of the intellectual property rights referred to in this Chapter, any advantage, favour, privilege or immunity granted by a Party to the nationals of any non-Party country shall be accorded immediately and unconditionally to the nationals of the other Party. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Party:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country; or

(c) in respect of the rights of performers, producers of sound recordings and broadcasting organizations not provided under this Chapter.

Article 15-06

Control of Abusive or Anticompetitive Practices or Conditions

1. The Parties agree that some licensing practices or conditions pertaining to the intellectual property rights referred to in this Chapter which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Chapter shall prevent the Parties from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As established in paragraph 1, a Party may adopt, consistently with the other provisions of this Chapter, appropriate measures to prevent or control such practices, which may include exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Party.

Article 15-07

Cooperation to Eliminate Trade in Infringing Goods

Each Party shall establish a competent office or authority to exchange information on trade in goods or services infringing the intellectual property rights referred to in this Chapter, with a view to eliminating illegal trade in such goods or services.

Article 15-08

Scope of the Cooperation

The cooperation mentioned in Article 15-07, shall exclude, if required by a Party, matters that have been submitted to the competent courts of each Party.

Section B – Copyright and Related Rights

Article 15-09

Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1.

3. Computer programmes, whether in source or object code, shall be protected as literary works under the Berne Convention.

4. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such. Such protection shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

5. In respect of at least computer programmes and cinematographic works, the Parties shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Party shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Party on authors and their successors in title. In respect of computer programmes, this obligation does not apply to rentals where the programme itself is not the essential object of the rental.

Article 15-10

Performers

1. Each Party shall grant performers the rights referred to the Rome Convention.

2. Notwithstanding the above, where a performer has consented to the visual or audiovisual fixation of a performance, Article 7 of the Rome Convention shall cease to be applicable.

Article 15-11

Producers of Sound Recordings

1. Each Party shall grant producers of sound recordings the rights referred to in the Rome Convention and the Geneva Convention, including the right to authorize or prohibit the first distribution to the public of the original and each copy of the sound recording through sale, rental or any other means.

2. Each Party shall grant producers of sound recordings, in accordance with its law, the right to authorize or prohibit commercial rental to the public of the originals or copies of protected sound recordings.

Article 15-12

Protection of Programme-Carrying Satellite Signals

Within five years from the date of entry into force of this Agreement, the Parties shall make it a civil offence to manufacture, import, sell, lease or perform a commercial act to make available devices that are primarily of assistance in decoding an encrypted programme-carrying satellite signal or to use such devices for commercial purposes without the authorization of the lawful provider or distributor of the service, in accordance with each Party's law.

Article 15-13

Provision for Copyright and Related Rights

1. Each Party shall provide that for copyright and related rights, any person acquiring or holding economic rights:

(a) may freely and separately transfer such rights on any terms; and

(b) may exercise those rights in its own name and fully enjoy the benefits derived from those rights.

2. Each Party shall confine limitations or exceptions to copyright and related rights to certain special cases that do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 15-14

Term of Protection of Copyright and Related Rights

1. The term of protection of an author's work shall last for life and for a minimum of 50 years after the author's death.

2. Where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years counted from the end of the calendar year of the authorized publication of the work or, failing

such authorized publication, 50 years from the making of the work counted the end of the calendar year of making.

3. The term of protection for the rights of performers and producers of sound recordings shall not be less than 50 years counted from the end of the calendar year of interpretation or fixation.

4. The term of protection for broadcasting organizations shall be a minimum of 25 years counted from the end of the calendar year in which the first broadcast was made.

Section C - Trademarks

Article 15-15

Protection

1. A trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one enterprise from those of another. Such signs may be registered as trademarks, particularly words, including personal names, letters, numerals, figurative elements, combinations of colours and any combination of signs. Where the signs are not intrinsically capable of distinguishing the relevant goods or services, each Party may make their registration contingent on the distinctive character they have acquired through use. A Party may require, as a condition for registration, that a sign be visually perceptible.

2. The Parties may refuse to register trademarks that are contrary to morality or decorum, reproduce national symbols or mislead the public.

3. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

4. Each Party shall publish a trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, each Party may afford an opportunity for the registration of a trademark to be opposed.

Article 15-16

Rights Conferred

The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of the Parties making rights available on the basis of use.

Article 15-17

Well-Known Trademarks

1. Each Party shall apply Article 6 bis of the Paris Convention to service marks.

2. A trademark shall be considered well known in a Party when a given sector of the public or of commercial circles in the Party knows the trademark as a consequence of commercial activities undertaken within or outside that Party by a person using the trademark in relation to its goods or services, and when the mark is known in the territory of the Party as a consequence of promotion or publicity of the mark.

3. Each Party shall, under its law, provide the means to deny or invalidate registration as a trademark of signs or figures that are identical or similar to a well-known trademark to be applied to a good or service in any case in which use of the mark by the person applying for registration could cause confusion or the risk of association with the person mentioned in paragraph 2, or which takes unfair advantage of the prestige of the mark. This prohibition shall not apply when the applicant for registration is the person referred to in paragraph 2.

4. To demonstrate that a trademark is well known, all evidence admitted by the Party in which the intention is to show that it is well known may be used.

Article 15-18

Exceptions

The Parties may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 15-19

Term of Protection

Initial registration, and each renewal of registration of a trademark shall be for a term of no less than ten years counted from the date on which the application was filed or the date on which it was granted. The registration of a trademark shall be renewable indefinitely.

Article 15-20

Requirement of Use

1. If use is required by a Party to maintain the registration of a trademark, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the

will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 15-21

Renewal of a Trademark

Subject to Annex 15-21, if use is required by a Party to renew a trademark, registration shall not be renewed without evidence of use of the trademark in accordance with the law of each Party.

Article 15-22

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one enterprise from those of other enterprises.

Article 15-23

Licensing and Assignment

Each Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the enterprise to which the trademark belongs.

Section D – Designations of Origin

Article 15-24

Designations of Origin

1. Designations of origin shall be governed by the provisions of Annex 15-24.

2. The provisions of Article 23 of the TRIPS Agreement shall apply to the designations of origin set out in Annex 15-24.

Section E – Enforcement of Intellectual Property Rights

Article 15-25

Definitions

For the purposes of this Section:

counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

pirated copyright goods means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an Article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation; and

right holder includes federations and associations having legal standing to assert such rights.

Article 15-26

General Obligations

1. The Parties shall ensure that enforcement procedures as provided in this Section, regarding the intellectual property rights referred to in this Chapter, are available under their law so as to permit effective action to be taken against any act of infringement of such rights, including expeditious remedies to prevent infringements and remedies which constitute an effective deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and state the reasons. They shall be made available at least to the parties to the proceeding without undue delay. Decisions shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Party's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Section does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct

from that for the enforcement of law in general, nor does it affect the capacity of the Parties to enforce their law in general. Nothing in this Section creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Civil and Administrative Procedure and Remedies

Article 15-27

Fair and Equitable Procedures

The Parties shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 15-28

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the Parties may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 15-29

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. The Parties are not obliged to accord such authority in respect of protected subject matter acquired

or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Section and provided that the provisions of Sections B and C specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, the Parties may limit the remedies available against such use to payment of adequate compensation to the right holder, based on the circumstances of each case and taking account of the economic value of the authorization. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with domestic law, declaratory judgements and adequate compensation shall be available.

Article 15-30

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder's damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, the Parties may authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 15-31

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 15-32

Right of Information

The Parties may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 15-33

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, the Parties shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 15-34

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in Articles 15-27 to 15-33.

Article 15-35

Provisional Measures

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right covered in this Chapter from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods, immediately after customs clearance; and

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to

cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted inaudita altera parte, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Party's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Article.

Special Requirements Related to Border Measures

Article 15-36

Suspension of Release by Customs Authorities

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place in contravention of the holder's rights, to lodge an application in writing with competent authorities, administrative or judicial, for the

suspension by the customs authorities of the release into free circulation of such goods. There shall be no obligation to apply such procedures to imports of goods put on the market in the other Party or in a non-Party country by or with the consent of the right holder, or to goods in transit.

2. The Parties may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Articles 15-36 through 15-45 are met. The Parties may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 15-37

Application

Any right holder initiating the procedures under Article 15-36 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 15-38

Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 15-39

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods pursuant to Article 15-36.

Article 15-40

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or

exportation have been complied with. In appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 15-35(6) shall apply.

Article 15-41

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 15-40.

Article 15-42

Right of Inspection and Information

Without prejudice to the protection of confidential information, the Parties shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, the Parties may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 15-43

Ex Officio Action

Where the Parties require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions set out in Article 15-40; and

(c) the Parties shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 15-44

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, the competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 15-31. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 15-45

De Minimis Imports

The Parties may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

Article 15-46

Criminal Procedures

The Parties shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. The Parties may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

Section F – Final Provisions

Article 15-47

Application of this Chapter

1. This Chapter does not give rise to obligations in respect of acts which occurred before the date of entry into force of this Agreement.

2. Except as otherwise provided for in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, and which is protected in a Party on the said date. In respect of this paragraph and paragraph 3, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention.

3. There shall be no obligation to restore protection to subject matter which on the date this Agreement enters into force has fallen into the public domain.

PART SIX – ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER 16: TRANSPARENCY

Article 16-01

Definitions

For the purposes of this Chapter, an administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 16-02

Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 16-03

Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and interested persons to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 16-04

Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might affect or substantially affects the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall provide information and respond promptly to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 16-05

Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 16-03 to particular persons, goods or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 16-06

Review and Appeal

1. Each Party shall establish or maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by the offices or authorities.

CHAPTER 17: ADMINISTRATION OF THE AGREEMENT

Article 17-01

Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising the officials mentioned in Annex 17-01(1) or their designees.

2. The Commission shall:

(a) supervise the adequate implementation of this Agreement;

(b) evaluate the results of the implementation of this Agreement;

(c) resolve disputes that may arise regarding its interpretation or application;

(d) supervise the work of all committees, sub-committees and working groups established under this Agreement, referred to in Annex 17-01(2); and

(e) consider any other matter that may affect the operation of this Agreement and any other matter referred to it by the Parties.

3. The Commission may:

(a) establish, and delegate responsibilities to, ad hoc or standing committees or expert groups;

(b) seek the advice of non-governmental persons or groups;

(c) modify the following in accordance with Annex 17-01(3):

(i) the rules of origin set out in Annex 4-03 (Specific Rules of Origin),

(ii) the terms set out in Annex 3-04(3) (Tariff Reduction Programme) to accelerate tariff elimination,

(iii) the schedule of products of a Party set out in Annex 3-04(4) (Exceptions) to include one or more goods on that schedule in Annex 3-04(3) (Tariff Reduction Programme),

(iv) the Uniform Regulations; and

(d) take such other action in the exercise of its functions as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.

5. The Commission shall convene at least once a year. The meetings shall be chaired alternately by each Party.

Article 17-02

The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

(a) establish a permanent office of its Section;

(b) be responsible for:

(i) the operation and costs of its Section, and

(ii) the remuneration and payment of expenses of panellists, their assistants, experts and members of the scientific review boards established under this Agreement, as set out in Annex 17-02;

(c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and

(d) notify the Commission of the location of its Section's office.

3. The Secretariat shall:

(a) provide assistance to the Commission;

(b) provide administrative assistance to panels established under Chapter 18 (Dispute Settlement), in accordance with procedures established pursuant to Article 18-10 (Model Rules of Procedure);

(c) as the Commission may direct, support the work of other committees, sub-committees and groups of experts established under this Agreement; and

(d) carry out other functions referred by the Commission.

CHAPTER 18: DISPUTE SETTLEMENT

Section A – Dispute Settlement

Article 18-01

Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 18-02

Scope and Coverage

Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the application or interpretation of this Agreement; and

(b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 18-02.

Article 18-03

WTO Dispute Settlement

1. Any matter arising under both this Agreement, the WTO Agreement and any agreement negotiated thereunder may be settled in either forum at the discretion of the complaining Party.

2. Once dispute settlement proceedings have been initiated under Article 18-05 or under the WTO Agreement, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3.

3. In any dispute referred to in paragraph 1, where the responding Party claims that its action is subject to Article 1-06 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

4. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 to the other Party and its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3, the responding Party shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 18-05.

5. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel, such as under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

Consultations

Article 18-04

Consultations

1. A Party may request in writing consultations with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party under paragraph 1 shall deliver the request to its Section of the Secretariat and the other Party.

3. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

4. The Parties shall:

(a) provide information to enable an examination of how the actual or proposed measure or other matter might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

5. The Parties, by mutual agreement, may directly request that the Commission meet in accordance with Article 18-05, even where the consultations provided for in this Article have not been held.

Initiation of Procedures
Article 18-05

Commission - Good Offices, Conciliation and Mediation

1. If the Parties fail to resolve a matter pursuant to Article 18-04 within:

(a) 30 days of delivery of a request for consultations,

(b) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods, or

(c) such other period as they may agree,

either Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where:

(a) it has initiated dispute settlement proceedings under the WTO Agreement regarding any matter subject to Article 18-03(3) and has received a request pursuant to Article 18-03(4) for recourse to dispute settlement procedures under this Chapter; or

(b) consultations have been held pursuant to Article 7-12(4) (Technical Consultations).

3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to its Section of the Secretariat and the other Party.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavour to resolve the dispute promptly. The Commission may:

(a) call on such technical advisers or create such expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

Panel Proceedings
Article 18-06

Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article 18-05(4) and the matter has not been resolved within:

(a) 30 days thereafter,

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 18-05(5), or

(c) such other period as the Parties may agree,

a Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to its Section of the Secretariat and the other Party.

2. On delivery of the request, the Commission shall establish an arbitral panel.

3. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 18-07

Roster

1. By agreement, the Parties shall establish by 1 October 1998 at the latest a roster of up to 20 individuals, four whom must not be citizens of either of the Parties, who are willing and able to serve as panellists. The roster may be modified every three years.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct to be established by the Commission.

Article 18-08

Qualifications of Panellists

1. All panellists shall meet the qualifications set out in Article 18-07(2).

2. Individuals may not serve as panellists for a dispute in which they have participated pursuant to Article 18-05(4).

Article 18-09

Panel Selection

1. The panel shall comprise five members.

2. The Parties shall endeavour to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days as chair an individual who is not a citizen of the Party making the selection.

3. Within 15 days of selection of the chair, each Party shall select two panellists who are citizens of the other Party.

4. If a Party fails to select its panellists within the period established in paragraph 3, such panellists shall be selected by lot from among the roster members who are citizens of the other Party.

5. Panellists shall normally be selected from the roster. A Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panellist by the other Party within 15 days after the individual has been proposed.

6. If a Party believes that a panellist is in violation of the code of conduct, the Parties shall consult and if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 18-10

Model Rules of Procedure

1. The Commission shall establish, by 1 October 1998 at the latest, Model Rules of Procedure, in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and

(b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. The Commission may amend from time to time the Model Rules of Procedure referred to in paragraph 1.

4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

> "To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission, as set out in the request for a Commission meeting, and to issue the reports referred to in Articles 18-13 and 18-14."

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 18-02, the terms of reference shall so indicate.

Article 18-11

Role of Experts

On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate.

Article 18-12

Scientific Review Boards

1. On request of a Party or, unless the Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a Party in a proceeding, subject to such terms and conditions as the Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the Parties and in accordance with the Model Rules of Procedure.

3. The Parties shall be provided:

(a) advance notice of, and an opportunity to provide comments to the panel on, the factual issues to be referred to the board; and

(b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties on the report into account in the preparation of its report.

Article 18-13

Initial Report

1. Unless the Parties otherwise agree, the panel shall base its initial report on the submissions and arguments of the Parties and on any information before it pursuant to Articles 18-11 and 18-12.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panellist is selected, present to the Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 18-10(6);

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 18-02, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for resolution of the dispute.

3. Panellists may furnish separate opinions on matters not unanimously agreed.

4. A Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of a Party, may:

(a) make any further examination that it considers appropriate; and

(b) reconsider its report.

Article 18-14

Final Report

1. The panel shall present to the Commission a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

2. The Parties may send written comments on the final report to the Commission.

3. No panel may, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

Implementation of Panel Final Reports

Article 18-15

Implementation of Final Reports

1. The final report of the panel shall be binding on the Parties. Unless the Parties otherwise agree, they shall implement the final report in the terms and conditions ordered in it.

2. Where a final report by an arbitral panel finds that the measure is non-conforming with this Agreement or causes nullification or impairment in the sense of Annex 18-02., the Party complained against shall, wherever possible, not implement the measure or remove it.

Article 18-16

Non-Implementation - Suspension of Benefits

1. The complaining Party may suspend application of benefits of equivalent effect to the Party complained against if the panel determines:

(a) that a measure is inconsistent with the obligations of this Agreement and the Party complained against fails to comply with the final report within 30 days of its receipt; or

(b) that a measure is the cause nullification or impairment in the sense of Annex 18-02 and the Parties are unable to reach a mutually satisfactory settlement of the dispute within 30 days of receipt of the final report.

2. Benefits shall be suspended until such time as the Party complained against complies with the final report of the arbitral panel or until the Parties reach a mutually satisfactory settlement of the dispute.

3. In considering what benefits to suspend pursuant to paragraph 1:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 18-02; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

4. On the written request of a Party delivered to the other Party and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.

5. The panel proceedings under paragraph 4 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panellist is selected or such other period as the Parties may agree.

Section B - Domestic Proceedings and Private Commercial Dispute Settlement

Article 18-17

Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party, that the other Party considers would merit its intervention, or if a court or administrative body of a Party solicits the views of the other Party, the Party in whose territory the body is located shall notify the other Party and its Section of the Secretariat. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 18-18

Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 18-19

Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. Each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes. To this end, the Parties shall conform to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

3. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

CHAPTER 19: EXCEPTIONS

Article 19-01

Definitions

For the purposes of this Chapter:

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the IMF;

IMF means the International Monetary Fund;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the IMF;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

taxes and taxation measures do not include:

(a) a "customs duty" as defined in Article 2-01 (Definitions of General Application); or

(b) the measures listed in exceptions (b), (c) and (d) of that definition; and

transfers means international transactions and related international transfers and payments.

Article 19-02

General Exceptions

1. Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement for the purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment;

(b) Chapter 7 (Sanitary and Phytosanitary Measures), except to the extent that a provision of that Chapter applies to services or investment; and

(c) Chapter 8 (Standardization-Related Measures), except to the extent that a provision of that Chapter applies to services.

2. Article XIV (a), (b) and (c) of GATS, is incorporated into and made part of this Agreement for the purposes of:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services;

(b) Part Three (Technical Standards);

(c) Chapter 10 (Cross-Border Trade in Services);

(d) Chapter 11 (Air Transportation Services); and

(e) Chapter 12 (Telecommunications).

Article 19-03

National Security

1. Nothing in this Agreement shall be construed:

(a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent either Party from taking any actions that 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 and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security 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 respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent either Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 19-04

Exceptions to Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede compliance with or be contrary to its Constitution or laws protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 19-05

Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 3-03 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3-11 (Export Taxes) shall apply to taxation measures.

4. Article 9-11 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 9-17 (Claim by an Investor of a Party on Its Own Behalf) or 9-18 (Claim by an Investor of a Party on Behalf of an Enterprise), where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 19-05 at the time that it gives notice under Article 9-20 (Notice of Intent to Submit a Claim to Arbitration). If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 9-21 (Submission of a Claim to Arbitration).

Article 19-06

Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with this Article.

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

(a) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with paragraph 2(c) and with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic programme, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

5. Restrictions imposed on transfers:

(a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;

(b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and

be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a);

(c) where imposed on transfers covered by Article 9-10 (Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and

(d) may not take the form of tariff surcharges, quotas, licences or similar measures.

Article 20-01

Annexes

The Annexes constitute integral parts of this Agreement.

Article 20-02

Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall enter into force and constitute an integral part of this Agreement.

Article 20-03

Convergence

The Parties shall promote the convergence of this Agreement with other integration agreements of the Latin American countries, in accordance with the mechanisms established in the Montevideo Treaty 1980.

Article 20-04

Duration and Entry into Force

1. This Agreement shall have an indefinite duration.

2 The Parties shall undertake the necessary legal procedures, including an exchange of communications accrediting that the legal formalities have concluded, to enable this Agreement to enter into force on 1 October 1998. Otherwise, the Agreement shall enter into force 30 days after the exchange.

Article 20-05

Reservations

This Agreement shall not be subject to reservations or interpretative statements on the occasion of ratification.

Article 20-06

Accession

1. In compliance with the Montevideo Treaty 1980, this Agreement is open to accession, after negotiation, to the other member countries of the Latin American Integration Association.

2. Accession shall be formalized once the terms have been negotiated by the Parties and the acceding country, through an Additional Protocol to this Agreement, which shall enter into force 30 days after it is deposited at the General Secretariat of the Latin American Integration Association.

Article 20-07

Termination

1. Either Party may terminate this Agreement. Termination shall be effective 180 days after notice to the other Party unless the Parties agree to a different period.

2. Regardless of whether a Party has terminated the Agreement, in the event of accession by a country or group of countries, as established in Article 20-06, it shall remain in force for the other Parties.

Article 20-08

Future Negotiations

Unless otherwise agreed, the Commission shall:

(a) begin negotiations on a chapter on financial services no later than 30 June 1999, at which time it shall appoint negotiators and establish appropriate procedures;

(b) begin negotiations to reciprocally eliminate antidumping duties, one year after this Agreement comes into force at which time it shall appoint negotiators and establish appropriate procedures; and

(c) begin negotiations on a chapter on government procurement one year after this Agreement comes into force, at which time it shall appoint negotiators and establish appropriate procedures.

Article 20-09

Cooperation on Rules of Origin

For closer trade integration and in accordance with Article 1-01 (Establishment of the Free Trade Zone), 1-03 (Relation to Other International Agreements) and 1-04 (Observance of the Agreement), the Parties shall seek to hold negotiations with non-member countries with which both Parties have entered into trade agreements similar to this Agreement, to study and establish mechanisms to achieve joint harmonization of the rules of origin.

Article 20-10

Revocations and Transitory Provisions

1. The Parties revoke ECA No. 17. However, with respect to Chapter 5 (Customs Procedures), importers may request that ECA No. 17 be applied for 30 days after this Agreement enters into force. To that effect, the certificates of origin issued under ECA No. 17 shall have been completed prior to the entry into force of this Agreement, be in effect and be made use of within that period.

2. With regard to Chapter 4 (Rules of Origin), for goods classified in subheadings 8422.40 and 8431.43, the applicable regional value content shall be determined in accordance with the following timetable:

(a) during the first year this Agreement is in force, forty-five per cent based on the transaction value method or thirty-six per cent based on the net cost method;

(b) during the second year this Agreement is in force, forty-six and one half per cent based on the transaction value method or thirty-eight per cent based on the net cost method; and

(c) during the third year this Agreement is in force, the regional value content established in Annex 4-03 (Specific Rules of Origin) shall be applied.

3. In the event that the roster referred to in Article 11-04(2)(c) (Dispute Settlement) has not been established, each Party shall appoint one panellist and the third shall be appointed by mutual agreement. Where a panel is not established in accordance with this paragraph within the term set out in Article 18-09 (Panel Selection), on the request of either of the Parties, the President of the Council of the International Civil Aviation Organization shall appoint the remaining panellists, following that organization's procedures.

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