

DECISION No 2/2001 OF THE EU-MEXICO JOINT COUNCIL

of 27 February 2001

implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement

(2001/153/EC)

THE JOINT COUNCIL,

Having regard to the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part (hereinafter 'the Agreement'), and in particular articles 6, 9, 12 and 50 in conjunction with Article 47 thereof.

Mindful of their rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation (hereinafter 'the WTO').

Whereas:

- (1) Article 4 and 6 of the Agreement provide that the Joint Council shall decide on the arrangements for a progressive and reciprocal liberalisation of trade in services, in accordance with Article V of the General Agreement on Trade in Services (hereinafter 'GATS').
- (2) Article 9 of the Agreement provides that the Joint Council shall adopt measures for the progressive liberal-

isation of investment and related payments between the Parties.

- (3) Article 12 of the Agreement stipulates that the Joint Council shall adopt measures with a view to ensure an adequate and effective protection of intellectual property rights.
- (4) Article 50 of the Agreement provides that the Joint Council shall establish a specific trade or trade related dispute settlement procedure.
- (5) In accordance with Article 60 of the Agreement, upon entry into force of that Agreement, the Decision 2/2000 of the Joint Council established by the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part, is deemed to have been adopted by the Joint Council established by the Agreement. That decision implements the objectives laid down in Articles 5, 10, 11 and 12(2)(a) of the Agreement,

HAS DECIDED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

Scope of the Decision

The Joint Council hereby lays down the necessary arrangements for implementing the following objectives of the Agreement:

- (a) the progressive and reciprocal liberalisation of trade in services, in conformity with Article V of GATS;

- (b) the progressive liberalisation of investment and related payments;
- (c) ensuring an adequate and effective protection of the intellectual property rights, in accordance with the highest international standards; and
- (d) establishing a dispute settlement mechanism.

TITLE II

TRADE IN SERVICES

*Article 2***Coverage**

1. For the purposes of this Title, trade in services is defined as the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to the service consumer of the other Party;
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party;
- (d) by a service supplier of a Party, through presence of natural persons in the territory of the other Party.

2. This Title applies to trade in all services sectors with the exception of:

- (a) audio-visual 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) the selling and marketing of air transport services,
 - (iii) computer reservation system (CRS) services, and
- (c) maritime cabotage.

3. Maritime transport and financial services shall be governed by the provisions laid down in Chapters II and III, respectively, unless otherwise specified.

4. Nothing in this Title shall be construed to impose any obligation with respect to government procurement.

5. The provisions of this Title shall not apply to subsidies granted by the Parties.

CHAPTER I

GENERAL PROVISIONS*Article 3***Definitions**

For purposes of this Chapter:

- (a) A federal, central or subcentral government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that federal, central and sub-central government;
- (b) 'service suppliers' of a Party means any person of a Party that seeks to provide or provides a service;
- (c) 'commercial presence' means:
 - (i) as regards nationals, the right to set up and manage undertakings, which they effectively control. This shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party,
 - (ii) as regards juridical persons, the right to take up and pursue the economic activities covered by this Chapter by means of the setting up and management of subsidiaries, branches or any other form of secondary establishment,
- (d) 'subsidiary' means a juridical person which is effectively controlled by another juridical person;
- (e) a 'Community juridical person' or a 'Mexican juridical person' means a juridical person set up in accordance with the laws of a Member State of the Community or of Mexico, respectively, and having its registered office, central administration, or principal place of business in the territory of the Community or of Mexico, respectively;

Should the juridical person have only its registered office or central administration in the territory of the Community or Mexico, respectively, it shall not be considered as a Community or a Mexican juridical person, respectively, unless its operations possess a real and continuous link with the economy of the Community or Mexico, respectively;

- (f) a 'national' means a natural person who is a national of one of the Member States or Mexico according to their respective national legislations.

Article 4

Market Access

In those sectors and modes of supply which shall be liberalised pursuant to the decision provided for in Article 7 (3), and subject to any reservations stipulated therein, the measures which a Party shall not maintain or adopt are defined as:

- (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;
- (e) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and
- (f) measures which require specific types of legal entities or joint ventures through which a service supplier of the other Party may supply a service.

Article 5

Most Favoured Nation Treatment

1. Subject to exceptions that may derive from harmonisation of regulations based on agreements concluded by a Party with a third country providing for mutual recognition in accordance with Article VII of GATS, treatment accorded to

services suppliers of the other Party shall be no less favourable than that accorded to like services suppliers of any third country.

2. Treatment granted under other agreements concluded by one of the Parties with a third country which have been notified under Article V of GATS shall be excluded from this provision.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall afford adequate opportunity to the other Party to negotiate the benefits granted therein.

Article 6

National Treatment

1. Each Party shall, in accordance with Article 7, grant to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

Article 7

Trade liberalisation

1. As provided for in paragraphs 2 to 4, the Parties shall liberalise trade in services between themselves, in conformity with Article V of GATS.

2. From the entry into force of this Decision, neither Party shall adopt new, or more, discriminatory measures as regards services or service suppliers of the other Party, in comparison with the treatment accorded to its own like services or service suppliers.

3. No later than three years following the entry into force of this Decision, the Joint Council shall adopt a decision providing for the elimination of substantially all remaining discrimination between the Parties in the sectors and modes of supply covered by this Chapter⁽¹⁾. That decision shall contain:

- (a) a list of commitments establishing the level of liberalisation which the Parties agree to grant each other at the end of a transitional period of ten years from the entry into force of this Decision;
- (b) a liberalisation calendar for each Party in order to reach at the end of the ten-year transitional period the level of liberalisation described in subparagraph (a).

4. Except as provided for in paragraph 2, Articles 4, 5 and 6 shall become applicable in accordance with the calendar and subject to any reservations stipulated in the Parties' lists of commitments provided for in paragraph 3.

5. The Joint Council may amend the liberalisation calendar and the list of commitments established in accordance with paragraph 3, with a view to remove or add exceptions.

Article 8

Regulatory carve-out

Each Party may regulate the supply of services in its territory, in so far as regulations do not discriminate against services and service suppliers of the other Party, in comparison to its own like services and service suppliers.

Article 9

Mutual recognition

1. In principle no later than three years following the entry into force of this Decision, the Joint Council shall establish the necessary steps for the negotiation of agreements providing for the mutual recognition of requirements, qualifications, licenses and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services.

⁽¹⁾ The Joint Council may decide to postpone the adoption of the decision provided for in this paragraph. Should this occur, the decision shall be adopted not later than one year after the conclusion of the negotiations mandated by Article XIX of GATS and in any event within a reasonable timeframe before the end of the ten-year transitional period.

2. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

CHAPTER II

MARITIME TRANSPORT

Article 10

International Maritime Transport

1. This Chapter applies to international maritime transport, including door to door and intermodal transport operations involving a sea-leg.

2. The Definitions contained in Article 3 apply to this Chapter⁽²⁾.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall continue to effectively apply the principle of unrestricted access to the international maritime market and traffic on a commercial and non-discriminatory basis;
- (b) each Party shall continue to grant to ships operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to, inter alia, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

4. Each Party shall permit to service suppliers of the other Party to have a commercial presence in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better, and this in conformity with the legislation and regulations applicable in each Party.

⁽²⁾ Notwithstanding Article 3(e), shipping companies established outside the Community or Mexico and controlled by nationals of a Member State of the Community or Mexico, respectively, shall also be beneficiaries of the provisions of this Chapter, if their vessels are registered in accordance with their respective legislation, in that Member State or in Mexico and carry the flag of a Member State or Mexico.

5. Paragraph 4 shall become applicable in accordance with the calendar and subject to any reservation stipulated in the Parties' list of commitments provided for in Article 7(3).

CHAPTER III

FINANCIAL SERVICES

Article 11

Definitions

In accordance with the terms of the Annex on Financial Services to the GATS and the GATS Understanding on Commitments in Financial Services, for purposes of this Chapter:

- (a) 'Financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:
- A. Insurance and insurance-related services:
1. direct insurance (including co-insurance):
 - (a) life;
 - (b) non-life;
 2. reinsurance and retrocession;
 3. insurance inter-mediation, such as brokerage and agency; and
 4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- B. Banking and other financial services (excluding insurance):
1. acceptance of deposits and other repayable funds from the public;
 2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 3. financial leasing;
 4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 5. guarantees and commitments;
6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
- (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
8. money broking;
9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) 'Financial service supplier' means any juridical person of a Party authorised to supply financial services. The term 'financial service supplier' does not include a public entity.
- (c) 'New financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered,

that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

(d) 'Public entity' means:

1. A government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
2. A private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

(e) 'Commercial presence' means a juridical entity within a Party's territory for the supply of financial services and includes wholly or partly owned subsidiaries, joint ventures, partnerships, franchising operations, branches, agencies, representative offices or other organisations.

Article 12

Establishment of financial service suppliers

1. Each Party shall allow the financial service suppliers of the other Party to establish a commercial presence in its territory.

2. Each Party may require a financial service supplier of the other Party to incorporate under its own law or impose terms and conditions on establishment that are consistent with the other provisions of this Chapter.

3. No Party may adopt new measures as regards to the establishment and operation of financial service suppliers of the other Party, which are more discriminatory than those applied on the date of entry into force of this Decision.

4. No Party shall maintain or adopt the following measures:

(a) limitations on the number of financial service suppliers whether in the form of numerical quotas, monopolies, exclusive financial service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or a requirement of an economic needs test; and

(e) limitations on the participation of foreign capital in the terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 13

Cross-border provision of financial services

1. Each party shall allow the cross-border provision of financial services.

2. No Party may adopt new measures as regards to the cross-border provision of financial services by financial service suppliers of the other Party which are more discriminatory as compared to those applied on the date of entry into force of this Decision.

3. Without prejudice to other means of prudential regulation of the cross-border provision of financial services, a Party may require the registration of cross-border financial service suppliers of the other Party.

4. Each Party shall permit persons located in its territory to purchase financial services from financial service suppliers of the other Party located in the territory of that other Party. This obligation does not require a Party to permit such suppliers to do business or carry on commercial operations; or to solicit, market or advertise their activities in its territory. Each Party may define the meaning of 'doing business', 'carry on commercial operations', 'solicit', 'market' and 'advertise' for purposes of this obligation.

*Article 14***National treatment**

1. Each Party shall grant to the financial service suppliers of the other Party, including those already established in its territory on the date of entry into force of this Decision, treatment no less favourable than that it accords to its own like financial service suppliers with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of commercial operations of financial service suppliers in its territory.

2. Where a Party permits the cross-border provision of a financial service it shall accord to the financial service suppliers of the other Party treatment no less favourable than that it accords to its own like financial service suppliers with respect to the provision of such a service.

*Article 15***Most favoured nation treatment**

1. Each Party shall accord to financial service suppliers of the other Party treatment no less favourable than it accords to the like financial service suppliers of a non Party.

2. Treatment granted under other agreements concluded by one of the Parties with a third country which have been notified under Article V of GATS shall be excluded from this provision.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall afford adequate opportunity to the other Party to negotiate the benefits granted therein.

*Article 16***Key personnel**

1. No Party may require a financial service supplier of the other Party to engage individuals of any particular nationality as senior managerial or other key personnel.

2. No Party may require that more than a simple majority of the board of directors of a financial service supplier of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

*Article 17***Commitments**

1. Nothing in this Chapter shall be construed to prevent a Party to apply:

- (a) any existing measure inconsistent with Articles 12 to 16 which is listed on Annex I; or
- (b) an amendment to any discriminatory measure referred to in subparagraph (a) to the extent that the amendment does not increase the inconsistency of the measure with Articles 12 to 16, as it existed immediately before the amendment.

2. The measures listed in Annex I shall be reviewed by the Special Committee on Financial Services established under Article 23, with a view to propose to the Joint Council their modification, suspension or elimination.

3. No later than three years following the entry into force of this Decision, the Joint Council shall adopt a decision providing for the elimination of substantially all remaining discrimination. That decision shall contain a list of commitments establishing the level of liberalisation which the Parties agree to grant each other.

*Article 18***Regulatory carve out**

Each Party may regulate the supply of financial services, in so far as regulations do not discriminate against financial service or financial service suppliers of the other Party in comparison to its own like financial services and financial service suppliers.

*Article 19***Prudential carve out**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

- (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial service supplier;
- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or

- (c) ensuring the integrity and stability of a Party's financial system.

Article 21

New financial services

2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of the other Party in comparison to its own like financial service suppliers.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

Each Party shall permit a financial service supplier of the other Party to provide any new financial service of a type similar to those services that the Party permits its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

Article 20

Effective and transparent regulation

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

- (a) by means of an official publication; or
- (b) in other written or electronic form.

2. Each Party's appropriate financial authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

3. On the request of an applicant, the appropriate financial authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to ensure that the Basle Committee's 'Core Principles for Effective Banking Supervision', the International Association of Insurance Supervisors' 'Key Standards for Insurance Supervision' and the International Organisation of Securities Commissions' 'Objectives and Principles of Securities Regulation' are implemented and applied in its territory.

5. The Parties also take note of the 'Ten Key Principles for Information Exchange' promulgated by the Finance Ministers of the G7 Nations, and undertake to consider to what extent they may be applied in bilateral contacts.

Article 22

Data processing

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. As far as the transfer of personal data is concerned, each Party shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals in accordance with Article 41 of the Agreement.

Article 23

Special Committee on Financial Services

1. The Joint Council hereby establishes a Special Committee on Financial Services. The Special Committee shall be composed of representatives of the Parties. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex II.

2. The functions of the Special Committee shall include:

- (a) supervising the implementation of this Chapter;
- (b) considering issues regarding financial services that are referred to it by a Party;
- (c) considering the application of measures listed by either Party in Annex I in order to propose to the Joint Council its modification, suspension or elimination, as appropriate;

- (d) reviewing the provisions contained in this Chapter at such a time as either of the Parties may grant a third party more favourable access to its financial services market pursuant to the conclusion of a regional economic integration agreement compatible with Article V of GATS, with a view to proposing consequent modifications to this Chapter to the Joint Council; and
- (e) considering implementation of Article 16 of the Agreement.

3. The Special Committee shall meet once a year on a date and with an agenda agreed in advance by the Parties. The office of chairman shall be held alternately. The Special Committee shall report to the Joint Committee the results of each annual meeting.

Article 24

Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Special Committee on Financial Services at its annual meeting.
2. Consultations under this Article shall include officials of the authorities specified in Annex II.
3. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.
4. Where a Party requires information for supervisory purposes concerning a financial service supplier in the other Party's territory, the Party may approach the competent financial authority in the other Party's territory to seek the information.

Article 25

Dispute settlement

Arbitrators appointed to panels established in accordance with Title V for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute, as well as expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

Article 26

Specific exceptions

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Chapter applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

CHAPTER IV

GENERAL EXCEPTIONS

Article 27

Exceptions

1. The provisions of this Title are subject to the exceptions contained in this Article.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Title shall be construed to prevent the adoption or enforcement by any Party of measures:
- (a) necessary to protect public morals or to maintain public order and public security;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title including those relating to:

- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;
- (d) inconsistent with the objective of Article 6 and 14, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collec-

tion of direct taxes in respect of services or service suppliers of the other Party.

3. The provisions of this Title shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

4. Nothing in this Title shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons⁽¹⁾ provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific provision of this Title.

TITLE III

INVESTMENT AND RELATED PAYMENTS

Article 28

Definitions

1. For the purpose of this Title, investment made in accordance with the laws of the Parties means direct investment, investment in real estate and purchase and sale of any kind of securities, as defined in the OECD Codes of Liberalisation.

2. Payments covered by this Title are those related to an investment.

Article 29

Payments related to investment

1. Without prejudice to Articles 30 and 31, restrictions on payments related to investment between the Parties shall be progressively eliminated. The Parties undertake not to introduce any new restrictions on payments related to direct investment from the entry into force of this Decision.

⁽¹⁾ In particular, a Party may require that natural persons must possess the necessary academic qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. Restrictions on payments related to investments in the services sector which have been liberalised in accordance with Title II of this Decision shall be eliminated according to the same timetable.

Article 30

Exchange rate policy and monetary policy difficulties

1. Where, in exceptional circumstances, payments related to investment between the Parties cause, or threaten to cause, serious difficulties for the operation of the exchange rate policy or monetary policy of a Party, that Party may take safeguard measures that are strictly necessary for a period not exceeding six months. The application of safeguard measures may be extended through their formal reintroduction.

2. The Party adopting the safeguard measure shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Article 31

Balance of payments difficulties

1. Where one or more Member States or Mexico is in serious balance of payments difficulties, or under imminent threat thereof, the Community or the Member State concerned, or Mexico, as the case may be, may adopt restrictive measures with regard to payments, including transfers of proceeds from the total or partial liquidation of direct investment. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation.

2. The Community or the Member State concerned, or Mexico, as the case may be, shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal. Such measures shall be taken in accordance with other international obligations of the Party concerned, including those under the WTO Agreement and the Articles of Agreement of the International Monetary Fund.

Article 32

Transfers

The liquidation and transfer abroad of any direct investment made in Mexico by Community residents or in the Community by Mexican residents, and of any profits stemming therefrom, shall not be affected by the provisions of Article 30.

Article 33

Investment promotion between the Parties

The Community and its Member States, within the scope of their respective competences, and Mexico shall aim to promote an attractive and stable environment for reciprocal investment. Such promotion should take the form, in particular, of:

- (a) mechanisms for information about and identification and dissemination of investment legislation and opportunities;

- (b) development of a legal framework favourable to investment on both sides, particularly through the conclusion, where appropriate, by the Member States of the Community and Mexico of bilateral agreements promoting and protecting investment and preventing double taxation;
- (c) development of uniform and simplified administrative procedures; and
- (d) development of mechanisms for joint investments, in particular with the small and medium enterprises of both Parties.

Article 34

International commitments on investment

The Community and its Member States, within the scope of their respective competences, and Mexico recall their international commitments with regard to investment, and especially the OECD Codes of Liberalisation and OECD National Treatment Instrument.

Article 35

Review clause

With the view of the objective of progressive liberalisation of investment, the Community and its Member States, and Mexico affirm their commitment to review the investment legal framework, the investment climate and the flow of investment between their territories consistent with their commitments in international investment agreements not later than three years after the entry into force of this Decision.

TITLE IV

INTELLECTUAL PROPERTY

Article 36

Multilateral Conventions on Intellectual Property

1. The Community and its Member States, on the one hand, and Mexico on the other hand, confirm their obligations arising from the following multilateral conventions:

- (a) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement, 1994);
- (b) Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967);
- (c) Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);

- (d) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961); and

- (e) Patent Cooperation Treaty (Washington, 1970, amended in 1979 and modified in 1984).

2. The Parties confirm the importance they attach to the obligations arising from the International Convention for the Protection of New Varieties of Plants, 1978 (1978 UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (1991 UPOV Convention).

3. At the entry into force of this Decision, the Member States of the Community and Mexico will have acceded to the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva, 1977 and amended in 1979).

4. Within 3 years of the entry into force of this Decision the Members States of the Community and Mexico will have acceded to the Budapest Treaty of the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977, modified in 1980).

5. The Parties shall make every effort to complete the necessary procedures for their accession to the following multilateral conventions at the earliest possible opportunity:

- (a) the WIPO Copyright Treaty (Geneva, 1996); and
- (b) the WIPO Performances and Phonogram Treaty (Geneva, 1996).

TITLE V

DISPUTE SETTLEMENT

CHAPTER I

SCOPE AND COVERAGE

Article 37

Scope and coverage

1. The provisions of this Title shall apply with respect to any matter arising from this Decision or from Articles 4, 5, 6, 7, 8, 9, 10 and 11 of the Agreement (hereinafter the 'covered legal instruments').

2. By way of exception, the arbitration procedure laid down in Chapter III shall not be applicable in the case of disputes concerning Article 9(2), 31(2) last sentence, 34 and 36 of this Decision.

CHAPTER II

CONSULTATION

Article 38

Consultation

1. The Parties shall at all times endeavour to agree on the interpretation and application of the covered legal instruments and shall make every attempt through cooperation and consultations to arrive to a mutually satisfactory resolution of any matter that might affect their operation.

2. Each Party may request consultations within the Joint Committee with respect to any matter relating to the application or interpretation of the covered legal instruments or any other matter that it considers might affect their operation.

3. The Joint Committee shall convene within 30 days of delivery of the request and shall endeavour to resolve the dispute promptly by means of a decision. That decision shall specify the implementing measures to be taken by the Party concerned, and the period of time to do so.

CHAPTER III

ARBITRATION PROCEDURE

Article 39

Establishment of an arbitration panel

1. In case a Party considers that a measure applied by the other Party violates the covered legal instruments and such matter has not been resolved within 15 days after the Joint Committee has convened pursuant to Article 38(3) or 45 days after the delivery of the request for a Joint Committee meeting, either Party may request in writing the establishment of an arbitration panel.

2. The requesting Party shall state in the request the measure and indicate the provisions of the covered legal instruments that it considers relevant, and shall deliver the request to the other Party and to the Joint Committee.

Article 40

Appointment of arbitrators

1. The requesting Party shall notify the other Party of the appointment of an arbitrator, and propose up to 3 candidates to serve as a chair. The other Party must then appoint a second arbitrator within 15 days, and propose up to 3 candidates to serve as a chair.

2. Both Parties shall endeavour to agree on the chair within 15 days after the second arbitrator has been appointed.

3. The date of establishment of the arbitration panel shall be the date on which the chair is appointed.

4. If a Party fails to appoint its arbitrator pursuant to paragraph 1, such arbitrator shall be selected by lot from the candidates proposed. If the Parties are unable to agree on the chair within the time period referred to in paragraph 2, it shall be selected by lot within one week from the candidates proposed.

5. If an arbitrator dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceeding shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is selected.

Article 41

Panel reports

1. The arbitration panel should, as a general rule, submit an initial report containing its findings and conclusions to the Parties not later than three months from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. Any Party may submit written comments to the arbitration panel on its initial report within 15 days of presentation of the report.

2. The arbitration panel shall present to the Parties a final report within 30 days of presentation of the initial report.

3. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its final report to the Parties within three months from the date of establishment of the arbitration panel. In no case should it do so later than four months. The arbitration panel may give a preliminary ruling on whether a case is urgent.

4. All decisions of the arbitration panel, including the adoption of the final report and of any preliminary ruling, shall be taken by majority vote, each arbitrator having one vote.

5. The complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

Article 42

Implementation of panel reports

1. Each Party shall be bound to take the measures involved in carrying out the final report referred to in Article 41(2).

2. The Party concerned shall inform the other Party within 30 days after the final report has been issued of its intentions in respect of its implementation.

3. The Parties shall endeavour to agree on the specific measures that are required for implementing the final report.

4. The Party concerned shall promptly comply with the final report. If it is impracticable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement, either Party may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall be given within 15 days from that request.

5. The Party concerned shall notify to the other Party the measures adopted in order to implement the final report before the expiry of the reasonable period of time determined in accordance with paragraph 4. Upon that notification, any of the Parties may request the original arbitration panel to rule on the conformity of those measures with the final report. The ruling of the arbitration panel shall be given within 60 days from that request.

6. If the Party concerned fails to notify the implementing measures before the expiry of the reasonable period of time determined in accordance with paragraph 4, or if the arbitration panel rules that the implementing measures notified by the Party concerned are inconsistent with the final report, such Party shall, if so requested by the complaining Party, enter into consultations with a view to agree on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend only the application of benefits granted under the covered legal instruments equivalent to those affected by the measure found to violate the covered legal instruments.

7. In considering what benefits to suspend, a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to violate the covered legal instruments. A complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

8. The complaining Party shall notify the other Party of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to violate the covered legal instruments, and whether the proposed suspension is in accordance with paragraphs 6 and 7. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration Panel has issued its ruling.

9. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate the covered legal instruments has been withdrawn or amended so as to bring it into conformity with the covered legal instruments, or the Parties have reached agreement on a resolution of the dispute.

10. At the request of any of the Parties, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the

suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

11. The rulings provided for in paragraphs 4, 5, 8 and 10 shall be binding.

Article 43

General provisions

1. Any time period mentioned in this Title may be extended by mutual agreement of the Parties.

2. Unless the Parties otherwise agree, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure set out in Annex III. The Joint Committee may amend the Model Rules of Procedure.

3. Arbitration proceedings established under this Title will not consider issues relating to each Party's rights and obligations under the WTO.

4. Recourse to the dispute settlement provisions of this Title shall be without prejudice to any possible action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular matter, instituted a dispute settlement proceeding under either Article 39(1) of this Title or the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same matter under the other forum until such time as the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.

TITLE VI

SPECIFIC DUTIES OF THE JOINT COMMITTEE WITH RESPECT TO TRADE AND OTHER TRADE RELATED MATTERS

Article 44

1. The Joint Committee shall:

- (a) supervise the implementation and proper operation of this Decision, as well as of any other decision concerning trade and other trade related matters⁽¹⁾;
- (b) oversee the further elaboration of the provisions of this Decision;

(c) undertake consultations pursuant to Article 38(2) and (3);

(d) carry out any functions assigned to it under this Decision or under any other decision concerning trade or trade related matters;

(e) assist the Joint Council in the performance of its functions regarding trade and other trade related matters;

(f) supervise the work of all the special committees established under this Decision; and

(g) report annually to the Joint Council.

⁽¹⁾ The Parties understand that 'trade and other trade related matters' includes any matter arising under this Decision and Titles III through V of the Agreement.

2. The Joint Committee may:
- (a) set up any special committees or bodies to deal with matters falling within its competence, and determine their composition and duties, and how they shall function;
 - (b) meet at any time by agreement of the Parties;
 - (c) consider any issues regarding trade and other trade related matters, and take appropriate action in the exercise of its functions; and
- (d) take decisions or make recommendations on trade and other trade related matters, in accordance with Article 48(2) of the Agreement.
3. When the Joint Committee meets in order to perform any of the tasks conferred upon it by this Decision, it shall be composed of representatives of the members of the Council of the European Union and of the European Commission, on the one hand, and of representatives of the Government of Mexico, on the other, with a responsibility for trade and trade related matters, normally at senior civil servant level.

TITLE VII

FINAL PROVISIONS

Article 45

Entry into force

This Decision shall enter into force on the first day of the month following that in which it is adopted by the Joint Council.

Article 46

Annexes

The Annexes to this Decision, including the Appendixes to those Annexes, are an integral part thereof.

Done at Brussels, 27 February 2001.

For the Joint Council
The President
J. CASTAÑEDA