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| Subject: | Interim Agreement on Trade between the European Union and the Republic of Chile |

# INTERIM AGREEMENT ON TRADE BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF CHILE

PREAMBLE

THE EUROPEAN UNION,

and

THE REPUBLIC OF CHILE, hereinafter referred to as "Chile",

hereinafter jointly referred to as "the Parties",

CONSIDERING the strong cultural, political, economic and cooperation ties which unite them,

MINDFUL of the significant contribution to the strengthening of those ties made by the Association Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, signed in Brussels on 18 November 2002 ("Association Agreement"),

EMPHASISING the comprehensive nature of their relationship,

CONSIDERING their commitment to modernise the existing Association Agreement to reflect new political and economic realities and the advancements made in their partnership,

ACKNOWLEDGING the importance of a strong and effective multilateral system, based upon international law, in preserving peace, preventing conflicts and strengthening international security and in tackling common challenges,

AFFIRMING their commitment to strengthen cooperation on bilateral, regional and global issues of common concern and to use all available tools to promote activities designed to develop an active and reciprocal international cooperation,

RECOGNISING the interim nature of this Agreement, which will strengthen bilateral economic and trade relations between the Parties, and which will cease to have effect and will be replaced by the Advanced Framework Agreement upon the entry into force of that Agreement,

WELCOMING the adoption and calling for the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030, adopted at the Third UN World Conference in Sendai on 18 March 2015, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted at Addis Ababa on 13 to 16 July 2015, the Resolution 70/1 adopted by the General Assembly of the United Nations ("UN General Assembly") on 25 September 2015, containing the outcome document "Transforming our world: the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals" ("2030 Agenda"), the Paris Agreement under the United Nations Framework Convention on Climate Change, done at Paris on 12 December 2015 ("Paris Agreement"), the New Urban Agenda, adopted during the UN Conference on Housing and Sustainable Urban Development (Habitat III) in Quito on 20 October 2016 ("New Urban Agenda") and the World Humanitarian Summit Commitments, adopted at the World Humanitarian Summit in Istanbul on 23 and 24 May 2016,

REAFFIRMING their commitment to promote sustainable development in its economic, social and environmental dimensions, their commitment to the development of international trade in such a way as to contribute to sustainable development in those three dimensions, which are recognised as deeply interlinked and mutually reinforcing, and their commitment to promote the achievement of the objectives of the 2030 Agenda,

REAFFIRMING their commitment to expand and diversify their trade relations in conformity with the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, and the specific objectives and provisions set out in this Agreement,

DESIRING to strengthen their economic relations, in particular their trade and investment relations, by strengthening and improving market access, and contributing to economic growth, while remaining mindful of the need to raise awareness of the economic and social impact of environmental damage, unsustainable patterns of production and consumption and their associated impact on human well-being,

CONVINCED that this Agreement will create a climate conducive to the growth of sustainable economic relations between them, in particular in the trade and investment sectors, which are essential to the realisation of economic and social development, technological innovation and modernisation,

RECOGNISING that the provisions of this Agreement are intended to stimulate mutually beneficial economic activity without undermining the right of each Party to regulate in the public interest within its territory,

RECOGNISING the close relationship between innovation and trade, as well as the relevance of innovation for economic growth and social development, and

RECALLING the importance of the various agreements signed by the European Union and Chile, which have fostered cooperation across the sectoral areas of the relationship between the Parties, and increased trade and investment,

HAVE AGREED AS FOLLOWS:

# CHAPTER 1

# GENERAL PROVISIONS

## ARTICLE 1.1

### Establishment of a free trade area

The Parties hereby establish a free trade area, in conformity with Article XXIV of GATT 1994 and Article V of GATS.

## ARTICLE 1.2

### Objectives

The objectives of this Agreement are:

(a) the expansion and the diversification of trade in goods, in conformity with Article XXIV of GATT 1994, between the Parties through the reduction or elimination of tariff and non-tariff barriers to trade;

(b) the facilitation of trade in goods, in particular through the provisions regarding customs and trade facilitation, standards, technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures, while preserving the right of each Party to regulate to achieve public policy objectives;

(c) the liberalisation of trade in services, in conformity with Article V of GATS;

(d) the development of an economic climate which is conducive to increased investment flows, the improvement of the conditions of establishment on the basis of the principle of non-discrimination while preserving the right of each Party to adopt and enforce measures necessary to pursue legitimate policy objectives;

(e) the facilitation of trade and investment between the Parties, including through the free transfer of current payments and capital movements;

(f) the effective and reciprocal opening of public procurement markets of the Parties;

(g) the promotion of innovation and creativity by ensuring the adequate and effective protection of intellectual property rights in accordance with the international obligations applicable between the Parties;

(h) the promotion of conditions fostering undistorted competition, in particular with regard to trade and investment between the Parties;

(i) the development of international trade in a manner that contributes to sustainable development in its economic, social and environmental dimensions; and

(j) the establishment of an effective, fair and predictable dispute settlement mechanism to resolve disputes regarding the interpretation and application of this Agreement.

ARTICLE 1.3

Definitions of general application

For the purposes of this Agreement:

(a) "Advanced Framework Agreement" means the Advanced Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Chile, of the other part, to be concluded;

(b) "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(c) "Anti-Dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade in Annex 1A to the WTO Agreement;

(d) "Association Agreement" means the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, signed in Brussels on 18 November 2002;

(e) "customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good, not including any:

(i) charge equivalent to an internal tax imposed in accordance with Article 2.4 of this Agreement;

(ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with GATT 1994, the Anti-Dumping Agreement, the Agreement on Agriculture, the SCM Agreement and the Safeguards Agreement, as appropriate; and

(iii) fee or other charge imposed on or in connection with the importation that is limited in amount to the approximate cost of services rendered;

(f) "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(g) "days" means calendar days, including weekends and holidays;

(h) "existing" means in effect on the date of entry into force of this Agreement;

(i) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(j) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(k) "good of a Party" means a domestic good as that is understood in GATT 1994, and includes originating goods of that Party;

(l) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes, developed by the World Customs Organization;

(m) "heading" means the first four digits in the tariff classification number under the Harmonized System;

(n) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or publicly owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(o) "measure" means any measure in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form;

(p) "measure of a Party" means any measure adopted or maintained by[1]:

(i) governments and authorities at all levels;

(ii) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels[2]; or

(iii) any entity which is in fact acting on the instructions of or under the direction or the control of a Party with regard to the measure[3];

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1 For greater certainty, "measure" includes omissions of a Party to take actions that are necessary to fulfil its obligations under this Agreement.

2 For greater certainty, the obligations of a Party under this Agreement shall apply to a State-owned enterprise or another person when it exercises any regulatory or administrative authority or other governmental authority delegated to it by that Party, such as the authority to expropriate, issue licences, approve commercial transactions or impose quotas, fees or other charges.

3 For greater certainty, if a Party claims that an entity is acting as referred to in subparagraph (iii), that Party bears the burden of proof and must at least provide solid indicia.

(q) "Member State" means a Member State of the European Union;

(r) "natural person" means:

(i) for the European Union, a national of a Member State, according to its law[1]; and

(ii) for Chile, a national of Chile, according to its law;

(s) "originating good" means a good qualifying under the rules of origin set out in Chapter 3;

(t) "person" means a natural person or a juridical person;

(u) "personal data" means any information relating to an identified or identifiable natural person;

(v) "Safeguards Agreement" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(w) "sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

(x) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

[1] For the purposes of Chapters 10 to 20, the definition of a "natural person" also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other State but who is entitled, under the law of the Republic of Latvia, to receive a non-citizen passport.

(y) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

(z) "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1 to the WTO Agreement;

(aa) "third country" means a country or territory outside the territorial scope of application of this Agreement as set out in Article 33.8;

(ab) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

(ac) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969; and

(ad) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

ARTICLE 1.4

Relation to the WTO Agreement and other existing agreements

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement and other existing agreements to which they are party.

2. Nothing in this Agreement shall be construed as requiring either Party to act in a manner which is inconsistent with its obligations under the WTO Agreement.

3. In the event of any inconsistency between this Agreement and any existing agreement other than the WTO Agreement to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

## ARTICLE 1.5

### References to laws and other agreements

1. Unless otherwise provided, where reference is made in this Agreement to the laws and regulations of a Party, those laws and regulations shall be understood to include any amendments thereto.

2. Unless otherwise provided for in this Agreement, where international agreements are referred to or incorporated, in whole or in part, into this Agreement, they shall be understood to include any amendments thereto or successor agreements which enter into force for both Parties on or after the date of signature of this Agreement.

3. If any matter arises regarding the implementation or application of this Agreement as a result of any amendment or successor agreement as referred to in paragraph 2, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution.

ARTICLE 1.6

Fulfilment of obligations

1. Each Party shall take any general or specific measures required to fulfil its obligations under this Agreement.

2. If either Party considers that the other Party has failed to fulfil any of the obligations that are described as essential elements in Article 1.2(2) or 2.2(1) of the Advanced Framework Agreement, it may take appropriate measures. Appropriate measures shall be taken in full respect of international law and shall be proportionate to the failure to fulfil the obligations referred to in this paragraph. Priority must be given to those measures which least disturb the functioning of this Agreement. For the purposes of this paragraph, "appropriate measures" may include the suspension, in part or in full, of this Agreement.

3. The measures referred to in paragraph 2 may be taken irrespective of whether the relevant provisions of the Advanced Framework Agreement are being provisionally applied.

# CHAPTER 2

# TRADE IN GOODS

## ARTICLE 2.1

### Objective

The Parties shall progressively and reciprocally liberalise trade in goods in accordance with this Agreement.

## ARTICLE 2.2

### Scope

Except as otherwise provided for in this Agreement, this Chapter applies to trade in goods of a Party.

ARTICLE 2.3

Definitions

For the purposes of this Chapter and Annex 2:

(a) "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(b) "consular transactions" means the procedure for obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third country, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of a good;

(c) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of GATT 1994 in Annex 1A to the WTO Agreement;

(d) "export licensing procedure" means an administrative procedure requiring the submission of an application or other documentation other than that generally required for customs clearance purposes, to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

(e) "import licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party;

(f) "remanufactured good" means a good classified in HS Chapters 84 to 90 or under heading 94.02, except for a good classified under HS headings 84.18, 85.09, 85.10, 85.16 and 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.1 and 8517.11, that:

(i) is entirely or partially comprised of parts obtained from goods that have been used;

(ii) has a similar performance and working condition compared to an equivalent good in new condition; and

(iii) is given the same warranty as an equivalent good in new condition;

(g) "repair" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function, or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended; repair of a good includes restoration and maintenance, but does not include an operation or process that:

(i) destroys the essential characteristics of a good, or creates a new or commercially different good;

(ii) transforms an unfinished good into a finished good; or

(iii) is used to improve or upgrade the technical performance of a good;

(h) "staging category" means the timeframe for the elimination of customs duties ranging from zero to seven years, after which a good is free of customs duty, unless otherwise specified in the schedules in Annex 2.

ARTICLE 2.4

National treatment on internal taxation and regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To that end, Article III of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.5

Reduction or elimination of customs duties

1. Unless otherwise provided for in this Agreement, each Party shall reduce or eliminate customs duties on goods originating in the other Party in accordance with its schedule in Annex 2.

2. For the purposes of paragraph 1, the base rate of customs duties shall be the one specified for each good in the schedules in Annex 2.

3. If a Party reduces its applied most-favoured-nation customs duty rate ("MFN rate"), the schedule in Annex 2 of that Party shall apply to the reduced rates. If a Party lowers its applied MFN rate to a level below the base rate in relation to a particular tariff line, that Party shall calculate the preferential applicable rate effecting the tariff reduction on the lowered applied MFN rate, maintaining the relative margin of preference for that particular tariff line for as long as the applied MFN rate is lower than the base rate. The relative margin of preference for any given tariff line in each staging period corresponds to the difference between the base rate set out in the schedule in Annex 2 of that Party and the applied duty rate for that tariff line in accordance with that schedule, divided by that base rate, and expressed in percentage terms.

4. On request of a Party, the Parties shall consult each other in order to consider accelerating the reduction or elimination of customs duties set out in the schedules in Annex 2. Having regard to such consultation, the Trade Council may adopt a decision to amend Annex 2 to accelerate that tariff reduction or elimination.

ARTICLE 2.6

Standstill

1. Unless otherwise provided for in this Agreement, a Party shall not increase any customs duty that is set as the base rate in Annex 2 or adopt any new customs duty on a good originating in the other Party.

2. For greater certainty, a Party may increase a customs duty to the level set out in Annex 2 for the respective staging period following a unilateral reduction.

ARTICLE 2.7

Export duties, taxes and other charges

1. A Party shall not introduce or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party, or any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted pursuant to Article 2.8.

ARTICLE 2.8

Fees and formalities

1. Fees and other charges imposed by a Party on, or in connection with, the importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of the services rendered, and shall not represent an indirect protection of domestic goods or taxation of imports or exports for fiscal purposes.

2. A Party shall not levy fees or other charges on, or in connection with, importation or exportation on an *ad valorem* basis.

3. Each Party may impose charges or recover costs only where specific services are rendered, including the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, in particular in respect of decisions relating to binding information or the provision of information concerning the application of customs legislation;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; or

(d) exceptional control measures, where such measures are necessary due to the nature of the goods or a potential risk.

4. Each Party shall promptly publish all fees and charges that it imposes in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties to become acquainted with them.

5. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

ARTICLE 2.9

Repaired goods

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its customs territory after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.

2. Paragraph 1 does not apply to a good imported in bond, into free-trade zones, or in a similar status, that is then exported for repair and is not re-imported in bond, into free-trade zones, or in a similar status.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair[1].

ARTICLE 2.10

Remanufactured goods

1. Unless otherwise provided for in this Agreement, a Party shall not accord to remanufactured goods of the other Party treatment that is less favourable than that which it accords to like goods in new condition.

[1] In the European Union, the inward processing procedure as laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1) is used for the purposes of this paragraph.

2. For greater certainty, Article 2.11 applies to import and export prohibitions or restrictions on remanufactured goods. If a Party adopts or maintains import and export prohibitions or restrictions on used goods, it shall not apply those measures to remanufactured goods.

3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that such goods meet all applicable technical requirements that apply to like goods in new condition.

ARTICLE 2.11

Import and export restrictions

Article XI of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*. Accordingly, a Party shall not 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 GATT 1994, including its Notes and Supplementary Provisions.

ARTICLE 2.12

Origin marking

If Chile applies mandatory country-of-origin marking requirements to goods of the European Union, the Trade Committee may decide that goods marked "Made in EU", or bearing a similar marking in the local language, fulfil such requirements upon importation into Chile. This Article does not affect either Party's right to specify the type of products for which country-of-origin marking requirements are mandatory. Chapter 3 does not apply to this Article.

ARTICLE 2.13

Import licensing procedures

1. Each Party shall ensure that all import licensing procedures applicable to trade in goods between the Parties are neutral in application and are administered in a fair, equitable, non-discriminatory and transparent manner.

2. A Party shall only adopt or maintain import licensing procedures as a condition for importation into its territory from the territory of the other Party if no other appropriate procedure to achieve an administrative purpose is reasonably available.

3. A Party shall not adopt or maintain any non-automatic import licensing procedure as a condition for importation into its territory from the territory of the other Party unless it is necessary to implement a measure that is consistent with this Agreement. A Party adopting such a non-automatic import licensing procedure shall indicate clearly to the other Party the measure being implemented through that procedure.

4. Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures. To that end, Articles 1, 2 and 3 of that Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

5. A Party that adopts new import licensing procedures, or modifies existing import licensing procedures, shall notify the other Party within 60 days of the date of publication of such new import licensing procedures or modifications of existing import licensing procedures. The notification shall include the information specified in paragraph 3 of this Article and in Article 5(2) of the Agreement on Import Licensing Procedures. A Party shall be deemed to be in compliance with this provision if it has notified the relevant new import licensing procedure, or any modifications to existing import licensing procedures, to the Committee on Import Licensing established in accordance with Article 4 of the Agreement on Import Licensing Procedures, including the information specified in Article 5(2) of that Agreement.

6. On request of a Party, the other Party shall promptly provide any relevant information, including the information specified in Article 5(2) of the Agreement on Import Licensing Procedures, regarding any import licensing procedure that it intends to adopt, has adopted or maintains, or any modification to existing import licensing procedures.

ARTICLE 2.14

Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, where practicable, 30 days before the procedure or modification takes effect, and in any event no later than the date on which such procedure or modification takes effect.

2. Each Party shall ensure that the publication of export licensing procedures includes the following information:

(a) the texts of its export licensing procedures, or of any modifications that it makes to those procedures;

(b) the goods subject to each export licensing procedure;

(c) for each export licensing procedure, a description of the process for applying for an export licence and any criteria that an applicant must fulfil in order to be eligible to apply for an export licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) one or more contact points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application or other relevant documentation must be submitted;

(f) a description of any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure remains in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use an export licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions that replace the requirement to obtain an export licence, information on how to request or use those exemptions or exceptions, and the criteria for granting them.

3. Within 30 days of the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that adopts new export licensing procedures, or modifies existing export licensing procedures, shall notify the other Party within 60 days of the date of publication of those new export licensing procedures or modifications to existing export licensing procedures. The notification shall include the reference to the source or sources where the information required pursuant to paragraph 2 is published and include, where appropriate, the address of the relevant government website or websites.

4. For greater certainty, nothing in this Article shall be construed as requiring a Party to grant an export licence or preventing a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, or under multilateral non-proliferation regimes and export control arrangements.

## ARTICLE 2.15

### Customs valuation

Each Party shall determine the customs value of goods of the other Party that are imported into its territory in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement. To that end, Article VII of GATT 1994, including its Notes and Supplementary Provisions, and Articles 1 to 17 of the Customs Valuation Agreement, including its Interpretative Notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

## ARTICLE 2.16

### Preference utilisation

1. For the purpose of monitoring the functioning of the Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a period starting one year after the entry into force of this Agreement and expiring 10 years after the tariff elimination is completed for all goods according to the schedules in Annex 2. Unless the Trade Committee decides otherwise, that period shall be automatically extended for five years. The Trade Committee may decide to extend it further.

2. The exchange of import statistics referred to in paragraph 1 shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and for imports of those goods that received non-preferential treatment.

ARTICLE 2.17

Specific measures concerning the management of preferential treatment

1. The Parties shall cooperate in preventing, detecting and combating breaches of customs legislation related to the preferential treatment granted under this Chapter, in accordance with their obligations under Chapter 3 and the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

2. A Party may, in accordance with the procedure laid down in paragraph 3, temporarily suspend the relevant preferential treatment of the goods concerned when that Party has made a finding, based on objective, compelling and verifiable information, that the other Party has committed large-scale systematic breaches of customs legislation in order to obtain the preferential treatment granted under this Chapter, and has made a finding of:

(a) a systematic lack or inadequacy of action by the other Party in verifying the originating status of goods and the fulfilment of the other requirements of the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters, when identifying or preventing contravention of the rules of origin;

(b) a systematic refusal by the other Party to carry out subsequent verification of the proof of origin on request of the Party, or to communicate its results in time, or undue delay in carrying out such verification or communication; or

(c) a systematic refusal or failure by the other Party to cooperate or assist in compliance with its obligations under the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters in relation to the preferential treatment.

3. The Party which has made a finding as referred to in paragraph 2 shall, without undue delay, notify the Trade Committee thereof and enter into consultations with the other Party within the Trade Committee with a view to reaching a solution acceptable to both Parties.

If the Parties fail to agree on a mutually acceptable solution within three months of the date of notification, the Party which has made the finding may decide to temporarily suspend the relevant preferential treatment of the goods concerned. That Party shall notify the temporary suspension to the Trade Committee without undue delay.

Temporary suspensions shall apply only for the period necessary to protect the financial interests of the Party concerned, and for no longer than six months. However, where the conditions that gave rise to the initial suspension persist at the expiry of the six-month period, the Party concerned may decide to renew the suspension. Any temporary suspension shall be subject to periodic consultations within the Trade Committee.

4. Each Party shall publish, in accordance with its internal procedures, notices to importers about any notification or decision concerning temporary suspensions as referred to in paragraph 3.

ARTICLE 2.18

Sub-Committee on Trade in Goods

The Sub-Committee on Trade in Goods established pursuant to Article 33.4(1) shall:

(a) monitor the implementation and administration of this Chapter and Annex 2;

(b) promote trade in goods between the Parties, including through consultations on improving market-access tariff treatment pursuant to Article 2.5(4) and other issues, as appropriate;

(c) provide a forum to discuss and resolve any issues related to this Chapter;

(d) promptly address barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, refer such matters to the Trade Committee for its consideration;

(e) recommend to the Parties any modification or addition to this Chapter;

(f) coordinate the exchange of data for preference utilisation or of any other information on trade in goods between the Parties;

(g) review any future amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any related conflict;

(h) perform the functions set out in Article 8.17.

# CHAPTER 3

# RULES OF ORIGIN AND ORIGIN PROCEDURES

## SECTION A

## RULES OF ORIGIN

### ARTICLE 3.1

### Definitions

For the purposes of this Chapter and Annexes 3-A to 3-E:

(a) "classification" means the classification of a product or material under a particular chapter, heading or sub-heading of the Harmonized System;

(b) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

(c) "customs authority" means:

(i) for Chile, the National Customs Service; and

(ii) for the European Union, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities of the Member States responsible for the application and enforcement of customs law;

(d) "exporter" means a person located in a Party who, in accordance with the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;

(e) "identical products" means products which in every respect correspond to those described in the product description; the product description on the commercial document used for making out a statement on origin for multiple shipments must be precise enough to clearly identify that product and also the identical products to be subsequently imported based on that statement;

(f) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;

(g) "material" means any substance used in the production of a product, including any ingredients, raw materials, components or parts;

(h) "product" means the result of production, even if it is intended for later use as a material in the production of another product; and

(i) "production" means any kind of working or processing, including assembly.

ARTICLE 3.2

General requirements

1. For the purposes of applying the preferential tariff treatment by a Party to an originating good of the other Party in accordance with this Agreement, provided that the product meets all other applicable requirements set out in this Chapter, the following products shall be considered as originating in the other Party:

(a) products wholly obtained in that Party as provided for in Article 3.4;

(b) products produced exclusively from materials originating in that Party; and

(c) products produced in that Party using non-originating materials, provided that they meet the requirements set out in Annex 3-B.

2. If a product has acquired originating status in accordance with paragraph 1, the non-originating materials used in the production of that product shall not be considered non-originating when that product is incorporated as a material in another product.

3. The acquisition of originating status shall be fulfilled without interruption in the territory of a Party.

ARTICLE 3.3

Cumulation of origin

1. A product originating in a Party shall be considered as originating in the other Party if used as a material in the production of another product in that other Party, provided that the working and processing carried out goes beyond one or more of the operations referred to in Article 3.6.

2. Materials classified in Chapter 3 of the Harmonized System originating in the countries referred to in subparagraph (b) of paragraph 4 and used in the production of canned tuna products classified in subheading 1604.14 of the Harmonized System may be considered as originating in a Party provided that the conditions in subparagraphs (a) to (e) of paragraph 3 are fulfilled, and that that Party sends a notification for examination by the Sub-Committee referred to in Article 3.31.

3. The Trade Committee may decide, following a recommendation by the Sub-Committee referred to in Article 3.31, that certain materials originating in the third countries[1] referred to in paragraph 4 of this Article may be considered as originating in a Party if they are used in the production of a product in that Party provided that:

(a) each Party has a trade agreement in force that forms a free trade area with that third country, within the meaning of Article XXIV of GATT 1994;

[1] For reference, "third country" is defined in subparagraph (aa) of Article 1.3.

(b) the origin of the materials referred to in this paragraph is determined in accordance with the rules of origin applicable under:

(i) the European Union's trade agreement forming a free trade area with that third country, if the material concerned is used in the production of a product in Chile; and

(ii) Chile's trade agreement forming a free trade area with that third country, if the material concerned is used in the production of a product in the European Union;

(c) an arrangement is in force between that Party and that third country on adequate administrative cooperation ensuring full implementation of this Chapter, including provisions on the use of appropriate documentation on the origin of materials, and that that Party notifies the other Party of that arrangement;

(d) the production or processing of the materials undertaken in that Party goes beyond one or more of the operations referred to in Article 3.6; and

(e) the Parties agree on any other applicable conditions.

4. The third countries referred to in paragraph 3 are:

(a) the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; and

(b) the Andean countries of Colombia, Ecuador and Peru.

ARTICLE 3.4

Wholly obtained products

1. The following products shall be considered as wholly obtained in a Party:

(a) plants and vegetable products grown or harvested there;

(b) live animals born and raised there;

(c) products obtained from live animals raised there;

(d) products obtained from hunting, trapping, fishing, gathering or capturing there, but not beyond the outer limits of that Party's territorial sea;

(e) products obtained from slaughtered animals born and raised there;

(f) products obtained from aquaculture there, if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, are born or raised from seed stock such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding or protection from predators;

(g) minerals or other naturally occurring substances, not included in subparagraphs (a) to (f), extracted or taken there;

(h) products of sea fishing and other products taken from the sea outside any territorial sea by a vessel of that Party;

(i) products made aboard a factory ship of that Party exclusively from products referred to in subparagraph (h);

(j) products extracted by a Party or a person of that Party from marine soil or subsoil outside any territorial sea provided that they have rights to work that soil or subsoil;

(k) waste or scrap derived from production there or from used products collected there, provided that those products are fit only for the recovery of raw materials; and

(l) products produced there exclusively from the products referred to in subparagraphs (a) to (k).

2. The terms "vessel of a Party" and "factory ship of a Party" in subparagraphs (h) and (i) of paragraph 1 mean a vessel and a factory ship, respectively, which:

(a) is registered in a Member State or in Chile;

(b) sails under the flag of a Member State or of Chile; and

(c) meets one of the following conditions:

(i) it is more than 50 % owned by natural persons of a Member State or of Chile; or

(ii) it is owned by a juridical person which:

(A) has its head office and its main place of business in a Member State or in Chile; and

(B) is more than 50 % owned by persons of one of those Parties.

ARTICLE 3.5

Tolerances

1. If a non-originating material used in the production of a product does not meet the requirements set out in Annex 3-B, that product shall be considered as originating in a Party, provided that:

(a) for all products[1] except those classified under Chapters 50 to 63 of the Harmonized System, the total value of non-originating materials does not exceed 10 % of the ex-works price of the product;

(b) for products classified under Chapters 50 to 63 of the Harmonized System, tolerances apply as stipulated in Notes 6 to 8 of Annex 3-A.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the requirements set out in Annex 3-B.

[1] Chapters 1 to 24 of the Harmonized System, in accordance with Note 9 of Annex 3-A.

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.4. If it is required pursuant to Annex 3-B that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 of this Article apply.

ARTICLE 3.6

Insufficient working or processing

1. Notwithstanding subparagraph (c) of Article 3.2(1), a product shall not be considered as originating in a Party if solely one or more of the following operations are carried out on non-originating materials in that Party:

(a) preserving operations such as drying, freezing, keeping in brine or other similar operations, if the sole purpose is to ensure that the product remains in good condition during transport and storage;

(b) breaking-up and assembly of packages;

(c) washing, cleaning, removing dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles and textile articles;

(e) simple painting and polishing operations;

(f) husking and partial or total milling of rice, polishing and glazing of cereals and rice;

(g) operations to colour or flavour sugar or form sugar lumps, partial or total milling of crystal sugar in solid form;

(h) peeling, stoning and shelling of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading or matching;

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds, including mixing of sugar with any material;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) simple addition of water or dilution or dehydration or denaturation of products; or

(p) slaughter of animals.

2. For the purposes of paragraph 1, an operation shall be considered simple if no special skills or machines, or apparatus or equipment specially produced or installed are needed for carrying out that operation.

ARTICLE 3.7

Unit of qualification

1. For the purposes of this Chapter, the unit of qualification shall be the product which is considered as the basic unit when classifying the product under the Harmonized System.

2. If a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual product shall be taken into account when applying this Chapter.

ARTICLE 3.8

Accessories, spare parts and tools

1. Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

2. The accessories, spare parts and tools referred to in paragraph 1 shall be disregarded in determining the origin of the product, except for the purposes of calculating the maximum value of non-originating materials, if a product is subject to a maximum value of non-originating materials as set out in Annex 3-B.

## ARTICLE 3.9

### Sets

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be regarded as originating in a Party if all their components are originating products. If a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating in a Party, provided that the value of the non-originating products does not exceed 15 % of the ex-works price of the set.

## ARTICLE 3.10

### Neutral elements

In order to determine whether a product qualifies as originating in a Party, it is not necessary to determine the origin of the following elements, which might be used in the production of the product:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used for testing or inspecting the products;

(c) machines tools, dies and moulds;

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

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

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

(g) any other material that is not incorporated into the product but the use of which can be demonstrated to be part of the production of the product.

ARTICLE 3.11

Packaging and packing materials and containers

1. If, under General Rule 5 for the Interpretation of the Harmonized System, packaging materials and containers in which a product is packed for retail sale are classified together with the product, those packaging materials and containers shall be disregarded in determining the origin of the product, except for the purposes of calculating the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials in accordance with Annex 3-B.

2. Packing materials and containers that are used to protect a product during transportation shall be disregarded in determining whether a product is originating in a Party.

ARTICLE 3.12

Accounting segregation for fungible materials

1. Fungible originating and non-originating materials shall be physically segregated during storage in order for them to maintain their originating or non-originating status, as the case may be. Those materials may be used in the production of a product without being physically segregated during storage provided that an accounting segregation method is used.

2. The accounting segregation method referred to in paragraph 1 shall be applied in conformity with a stock management method under accounting principles which are generally accepted in the Party. The accounting segregation method shall ensure that at any time the number of products which could be considered as originating in a Party does not exceed the number that would have been obtained by physical segregation of the stocks during storage.

3. For the purposes of paragraph 1, "fungible materials" means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product.

ARTICLE 3.13

Returned products

If a product originating in a Party is exported from that Party to a third country and returns to that Party, it shall be considered as non-originating unless it can be demonstrated to the satisfaction of the customs authority of that Party that the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation other than that necessary to preserve it in good condition while in the third country or while being exported.

ARTICLE 3.14

Non-alteration

1. An originating product declared for home use in the importing Party shall not, after exportation and prior to being declared for home use, be altered, transformed in any way or subjected to operations other than to preserve it in good condition or to add or affix marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party.

2. Storage or exhibition of a product may take place in a third country provided it remains under customs supervision in that third country.

3. Without prejudice to Section B, the splitting of consignments may take place in the territory of a third country if it is carried out by the exporter or under its responsibility and provided that those consignments remain under customs supervision in the third country.

4. In the case of doubt as to whether the conditions provided for in paragraphs 1 to 3 have been complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance. Such evidence may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages, or any evidence related to the product itself.

## ARTICLE 3.15

## Exhibitions

1. Originating products sent for exhibition in a third country and sold after the exhibition for importation in a Party shall benefit on importation in accordance with this Agreement provided that it is shown to the satisfaction of the customs authorities that:

(a) an exporter has consigned those products from a Party to the third country in which the exhibition was held and has exhibited them there;

(b) the products have been sold or otherwise disposed of by that exporter to a person in a Party;

(c) the products have been consigned during the exhibition or immediately thereafter in the state to which they were sent for exhibition; and

(d) the products have not, since their consignment for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A statement on origin shall be made out in accordance with Section B and submitted to the customs authorities in accordance with the customs procedures of the importing Party. The name and address of the exhibition shall be indicated thereon.

3. Paragraph 1 applies to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display, which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

4. The customs authorities of the importing Party may require evidence that the products have remained under customs control in the country of exhibition, as well as additional documentary evidence of the conditions under which they have been exhibited.

SECTION B

ORIGIN PROCEDURES

ARTICLE 3.16

Claim for preferential tariff treatment

1. The importing Party shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall bear the responsibility for the correctness of the claim for preferential tariff treatment and for compliance with the requirements set out in this Chapter.

2. The claim for preferential tariff treatment shall be based on one of the following:

(a) a statement on origin made out by the exporter in accordance with Article 3.17;

(b) the importer's knowledge subject to the conditions set out in Article 3.19.

3. The claim for preferential tariff treatment and the basis for that claim as referred to in paragraph 2 shall be included in the customs declaration, in accordance with the laws and regulations of the importing Party.

4. An importer making a claim for preferential treatment based on a statement on origin in accordance with subparagraph (a) of paragraph 2 shall keep the statement and shall present it to the customs authority of the importing Party upon request.

ARTICLE 3.17

Statement on origin

1. An exporter of a product shall make out a statement on origin on the basis of information demonstrating that the product is originating, including, if applicable, information on the originating status of materials used in the production of the product.

2. The exporter shall be responsible for the correctness of the statement on origin made out and the information provided pursuant to paragraph 1. If the exporter has reason to believe that the statement on origin contains or is based on incorrect information, the exporter shall immediately notify the importer of any change affecting the originating status of the product. In that event, the importer shall correct the import declaration and pay any applicable customs duty owing.

3. The exporter shall make out a statement on origin in one of the linguistic versions included in Annex 3-C on an invoice or on any other commercial document that describes the originating product in sufficient detail so as to enable its identification in the Harmonized System nomenclature. The importing Party shall not require the importer to submit a translation of the statement on origin.

4. A statement on origin shall be valid for one year from the date it was made out.

5. A statement on origin may be made out for:

(a) a single shipment of one or more products into a Party; or

(b) multiple shipments of identical products into a Party within the period specified in the statement on origin not exceeding 12 months.

6. The importing Party shall, on request of the importer and subject to any requirements imposed by the importing Party, allow a single statement on origin to be used for unassembled or disassembled products, within the meaning of General Rule 2(a) of the Harmonized System, classified under Sections XV to XXI of the Harmonized System if imported in instalments.

ARTICLE 3.18

Minor discrepancies and minor errors

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor discrepancies between the statement on origin and the documents submitted to the customs office, or minor errors in the statement on origin.

ARTICLE 3.19

Importer's knowledge

1. The importing Party may, in its laws and regulations, set conditions to determine which importers may base a claim for preferential tariff treatment on the importer's knowledge.

2. Notwithstanding paragraph 1, the importer's knowledge that a product is originating shall be based on information demonstrating that the product effectively qualifies as originating and meets the requirements set out in this Chapter to obtain originating status.

ARTICLE 3.20

Record-keeping requirements

1. An importer claiming preferential tariff treatment for a product imported into a Party shall:

(a) if the claim for preferential treatment is based on a statement on origin, keep the statement on origin made out by the exporter for a minimum of three years from the date of the claim of preference of the product; and

(b) if the claim for preferential treatment is based on the importer's knowledge, keep the information demonstrating that the product meets the requirements set out in this Chapter to obtain originating status for a minimum of three years from the date of the claim for preferential treatment.

2. An exporter who made out a statement on origin shall, for a minimum of four years following the making out of that statement on origin, keep copies of the statement on origin and all other records demonstrating that the product meets the requirements set out in this Chapter to obtain originating status.

3. The records to be kept in accordance with this Article may be held in electronic form in accordance with the laws and regulations of the importing or exporting Party, as appropriate.

ARTICLE 3.21

Exemptions from the requirements regarding statements on origin

1. Products sent as packages from private persons to private persons or forming part of the personal luggage of travellers shall be admitted as originating products without a statement on origin being required, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Chapter, and that there is no doubt as to the veracity of that declaration.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the goods that no commercial purpose is intended, provided that the importation does not form part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for an statement on origin.

3. The total value of the products referred to in paragraph 1 shall not exceed EUR 500 or its equivalent amount in the currency of the Party in the case of packages, or EUR 1 200 or its equivalent amount in the currency of the Party in the case of products forming part of the personal luggage of travellers.

ARTICLE 3.22

Verification

1. The customs authority of the importing Party may verify the originating status of a product or whether the other requirements set out in this Chapter are met on the basis of risk assessment methods, which may include random selection. For the purposes of such verification, the customs authority of the importing Party may send a request for information to the importer who made the claim for preferential treatment pursuant to Article 3.16.

2. The customs authority of the importing Party sending a request pursuant to paragraph 1 shall not request more than the following information in relation to the origin of a product:

(a) the statement on origin if the claim for preferential treatment was based on a statement on origin; and

(b) information pertaining to the fulfilment of origin criteria, which is:

(i) if the origin criterion is "wholly obtained", the applicable category (such as harvesting, mining, fishing) and place of production;

(ii) if the origin criterion is based on a change in tariff classification, a list of all the non-originating materials including their tariff classification (in 2-, 4- or 6-digit format, depending on the origin criteria);

(iii) if the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production;

(iv) if the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the final product; and

(v) if the origin criterion is based on a specific production process, a description of that specific process.

3. When providing the requested information, the importer may add any other information that it considers relevant for the purposes of verification.

4. If the claim for preferential tariff treatment is based on a statement on origin in accordance with subparagraph (a) of Article 3.16(2) issued by the exporter, the importer shall provide that statement on origin but may reply to the customs authority of the importing Party indicating that the information referred to in subparagraph (b) of paragraph 2 of this Article cannot be provided.

5. Where the claim for preferential tariff treatment is based on the importer's knowledge referred to in subparagraph (b) of Article 3.16(2), the customs authority of the importing Party conducting the verification may, after having requested information pursuant to paragraph 1 of this Article, send an additional request for information to the importer if that customs authority considers that additional information is required in order to verify the originating status of the product or whether the other requirements set out in this Chapter are met. The customs authority of the importing Party may request specific documentation and information from the importer, if appropriate.

6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the products concerned while awaiting the results of a verification, it may offer the importer the possibility to release the products. As a condition for such release, the importing Party may require a guarantee or other appropriate precautionary measure. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the customs authority of the importing Party has ascertained the originating status of the products concerned, or that the other requirements set out in this Chapter have been met.

## ARTICLE 3.23

### Administrative cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate with each other, through their respective customs authorities, in order to verify the originating status of a product or whether the other requirements set out in this Chapter have been met.

2. If a claim for preferential tariff treatment is based on a statement on origin in accordance with subparagraph (a) of Article 3.16(2), the customs authority of the importing Party conducting the verification may, after having requested information from the importer pursuant to Article 3.22(1), send a request for information to the customs authority of the exporting Party within a period of two years following the date of the claim for preferential treatment, if the customs authority of the importing Party considers that additional information is needed in order to verify the originating status of the product or whether the other requirements set out in this Chapter have been met. The customs authority of the importing Party may request specific documentation and information from the customs authority of the exporting Party, if appropriate.

3. The customs authority of the importing Party shall include the following information in the request referred to in paragraph 2:

(a) the statement on origin or a copy thereof;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter to be verified;

(d) the subject and scope of the verification; and

(e) if applicable, any relevant documentation.

4. The customs authority of the exporting Party may, in accordance with the laws and regulations of that Party, conduct its verification by requesting documentation from the exporter and calling for any evidence, or by visiting the premises of the exporter to review records and observe the facilities used in the production of the product.

5. Following the request referred to in paragraph 2, the customs authority of the exporting Party shall provide the customs authority of the importing Party with the following information:

(a) the requested documentation, if available;

(b) an opinion regarding the originating status of the product;

(c) the description of the product subject to verification and the tariff classification relevant to the application of the rules of origin;

(d) a description and explanation of the production process to support the originating status of the product;

(e) information on the manner in which the verification of the originating status of the product pursuant to paragraph 4 was conducted; and

(f) supporting documentation, if appropriate.

6. The customs authority of the exporting Party shall not transmit information to the customs authority of the importing Party referred to in subparagraph (a) or (f) of paragraph 5 without the consent of the exporter.

7. All the information requested, including any supporting documents and all other related information regarding verification should preferably be exchanged electronically between the customs authorities of the Parties.

8. The Parties shall, via the coordinators designated in accordance with this Agreement, provide each other with the contact details of their respective customs authorities and any modification thereto within 30 days of such modification.

ARTICLE 3.24

Mutual assistance in the fight against fraud

In case of a suspected breach of this Chapter, the Parties shall provide each other with mutual assistance, in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

ARTICLE 3.25

Denial of claims for preferential tariff treatment

1. Subject to the requirements set out in paragraphs 3 to 5, the customs authority of the importing Party may deny a claim for preferential tariff treatment if:

(a) within a period of three months following the request for information pursuant to Article 3.22(1):

(i) no reply is provided by the importer;

(ii) in cases where the claim for preferential tariff treatment is based on a statement on origin in accordance with subparagraph (a) of Article 3.16(2), the statement on origin was not provided; or

(iii) in cases where the claim for preferential tariff treatment is based on the importer's knowledge as referred to in subparagraph (b) of Article 3.16(2), the information provided by the importer is inadequate to confirm the originating status of the product;

(b) within a period of three months following the request for additional information pursuant to Article 3.22(5):

(i) no reply is provided by the importer; or

(ii) the information provided by the importer is inadequate to confirm that the product is originating;

(c) within a period of 10 months following the request for information pursuant to of Article 3.23(2):

(i) no reply is provided by the customs authority of the exporting Party; or

(ii) the information provided by the customs authority of the exporting Party is inadequate to confirm the originating status of the product.

2. The customs authority of the importing Party may deny a claim for preferential tariff treatment if the importer which has made that claim fails to comply with requirements set out in this Chapter other than those relating to the originating status of products.

3. If the customs authority of the importing Party has sufficient justification to deny a claim for preferential tariff treatment in accordance with paragraph 1 of this Article and where the customs authority of the exporting Party has provided an opinion pursuant to subparagraph (b) of Article 3.23(5) confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its intention to deny the claim for preferential treatment within two months of the receipt of that opinion.

4. If the notification referred to in paragraph 3 has been made, consultations shall be held on request of either Party, within three months of the date of that notification. The time period for consultation may be extended on a case-by-case basis by mutual agreement between the customs authorities of the Parties. The consultation may take place in line with the procedure set by the Sub-Committee referred to in Article 3.31.

5. Upon the expiry of the time period for consultation, the customs authority of the importing Party shall deny the claim for preferential tariff treatment only if it is not able to confirm the originating status of the product and after having granted the importer the right to be heard.

ARTICLE 3.26

Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it by the other Party pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the authorities of the importing Party shall only be used by those authorities for the purposes of this Chapter.

3. Each Party shall ensure that confidential information collected pursuant to this Chapter is not used for purposes other than the administration and enforcement of decisions and determinations relating to the origin of products and customs matters, except with the permission of the person or Party who provided the confidential information.

4. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Chapter to be used in any administrative, judicial or quasi-judicial proceedings initiated for failure to comply with customs-related laws and regulations implementing this Chapter. A Party shall notify the person or Party that provided the information concerned of any such use in advance.

ARTICLE 3.27

Refunds and claims for preferential tariff treatment after importation

1. Each Party shall provide that an importer may make, after importation, a claim for preferential tariff treatment and for a refund of any excess duties paid for a product if:

(a) the importer did not make a claim for preferential tariff treatment at the time of importation;

(b) the claim is made no later than two years after the date of importation; and

(c) the product concerned was eligible for preferential tariff treatment when it was imported into the territory of the Party.

2. As a condition for preferential tariff treatment on the basis of a claim made pursuant to paragraph 1, the importing Party may require that the importer:

(a) makes a claim for preferential tariff treatment in accordance with the laws and regulations of the importing Party;

(b) provides the statement on origin, as appropriate; and

(c) satisfies all other applicable requirements set out in this Chapter in the same manner as if preferential tariff treatment had been claimed at the time of importation.

ARTICLE 3.28

Administrative measures and sanctions

1. A Party shall impose administrative measures and sanctions where appropriate, in accordance with its respective laws and regulations, on a person that draws up a document, or causes a document to be drawn up, which contains incorrect information for the purposes of obtaining preferential tariff treatment for a product, or that does not comply with the requirements set out in:

(a) Article 3.20;

(b) Article 3.23(4) by not providing evidence or refusing a visit; or

(c) Article 3.17(2) by not correcting a claim for preferential tariff treatment made in the customs declaration and paying the custom duty as appropriate, if the initial claim for preference was based on incorrect information.

2. The Party shall take into account paragraph 3.6 of Article 6 of the Agreement on Trade Facilitation in Annex 1A to the WTO Agreement in cases where an importer voluntarily discloses a correction to a claim for preferential treatment prior to receiving a verification request, in accordance with the laws and regulations of that Party.

SECTION C

FINAL PROVISIONS

ARTICLE 3.29

Ceuta and Melilla

1. For the purposes of this Chapter, for the European Union, the term "Party" does not include Ceuta and Melilla.

2. Products originating in Chile shall, when imported into Ceuta and Melilla, in all respects be granted the same customs treatment under this Agreement as that which is granted to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Union. Chile shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs treatment as that which is granted to products imported from and originating in the European Union.

3. The rules of origin and origin procedures under this Chapter apply *mutatis mutandis* to products exported from Chile to Ceuta and Melilla and to products exported from Ceuta and Melilla to Chile.

4. Ceuta and Melilla shall be considered as a single territory.

5. Article 3.3 applies to import and exports of products between the European Union, Chile and Ceuta and Melilla.

6. The exporter shall enter "Chile" and "Ceuta and Melilla" in field 3 of the text of the statement on origin in Annex 3-C, depending on the origin of the product.

7. The customs authority of the Kingdom of Spain shall be responsible for the application of this Article in Ceuta and Melilla.

## ARTICLE 3.30

### Amendments

The Trade Council may adopt decisions to amend this Chapter and Annexes 3-A to 3-E, pursuant to subparagraph (a) of Article 33.1(6).

## ARTICLE 3.31

### Sub-Committee on Customs, Trade Facilitation and Rules of Origin

1. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties with responsibility for customs.

2. The Sub-Committee shall be responsible for the effective implementation and application of this Chapter.

3. For the purposes of this Chapter, the Sub-Committee shall have the following functions:

(a) reviewing and making appropriate recommendations, as necessary, to the Trade Committee on:

(i) the implementation and application of this Chapter; and

(ii) any amendments to this Chapter and Annexes 3-A to 3-E proposed by a Party;

(b) making suggestions to the Trade Committee concerning the adoption of explanatory notes to facilitate the implementation of this Chapter; and

(c) considering any other matter related to this Chapter as agreed by the Parties.

## ARTICLE 3.32

## Products in transit or storage

The Parties may apply this Agreement to products which comply with this Chapter and which, on the date of entry into force of this Agreement, are in transit or are in temporary storage in bonded warehouse or in free zones in the European Union or in Chile, subject to the submission of a statement on origin to the customs authorities of the importing Party.

ARTICLE 3.33

Explanatory notes

Explanatory notes regarding the interpretation, application and administration of this Chapter are set out in Annex 3-E.

# CHAPTER 4

# CUSTOMS AND TRADE FACILITATION

## ARTICLE 4.1

### Objectives

1. The Parties recognise the importance of customs and trade facilitation in the evolving global trading environment.

2. The Parties recognise that international trade and customs instruments and standards are the basis for import, export and transit requirements and procedures.

3. The Parties recognise that customs laws and regulations shall be non-discriminatory and that customs procedures shall be based upon the use of modern methods and effective controls to combat fraud, protect consumer health and safety and promote legitimate trade. Each Party should periodically review its customs laws, regulations and procedures. The Parties also recognise that their customs procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives and that they shall be applied in a manner that is predictable, consistent and transparent.

4. The Parties agree to reinforce their cooperation with a view to ensuring that the relevant customs laws, regulations and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs control.

ARTICLE 4.2

Definitions

For the purposes of this Chapter "customs authority" means:

(a) for Chile, the *Servicio Nacional de Aduanas* (National Customs Service), or its successor; and

(b) for the European Union, those services of the European Commission responsible for customs matters and the customs administrations and any other authorities in the Member States responsible for the application and enforcement of customs laws and regulations.

ARTICLE 4.3

Customs cooperation

1. The Parties shall cooperate on customs matters between their respective customs authorities in order to ensure that the objectives set out in Article 4.1 are attained.

2. The Parties shall develop cooperation, including by:

(a) exchanging information concerning customs laws and regulations and their implementation, and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) enforcement of intellectual property rights by the customs authorities;

(iii) facilitation of transit movements and transhipment;

(iv) relations with the business community; and

(v) supply chain security and risk management;

(b) working together on the customs-related aspects of securing and facilitating international trade supply chains in accordance with the SAFE Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization (hereinafter referred to as "WCO") adopted in June 2005;

(c) considering the development of joint initiatives relating to import, export and other customs procedures, including the exchange of best practices and technical assistance, and ensuring the provision of an effective service to the business community; such cooperation may include exchanges on customs laboratories, the training of customs officers and on new technologies for customs controls and procedures;

(d) strengthening their cooperation in the field of customs in international organisations such as the WTO and the WCO;

(e) establishing, if relevant and appropriate, the mutual recognition of authorised economic operator programmes, including equivalent trade facilitation measures;

(f) carrying out exchanges on risk-management techniques, risk standards and security controls, in order to establish, to the extent practicable, minimum standards for risk-management techniques and related requirements and programmes;

(g) endeavouring to harmonise their data requirements for import, export and other customs procedures, by implementing common standards and data elements in accordance with the WCO Data Model;

(h) sharing their respective experiences in developing and deploying their single window systems, and, if appropriate, developing common sets of data elements for those systems;

(i) maintaining a dialogue between their respective policy experts to promote the utility, efficiency, and applicability of advance rulings for customs authorities and traders; and

(j) exchanging, if relevant and appropriate, through a structured and recurrent communication between their customs authorities, certain categories of customs-related information for specific purposes, namely improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collections or safety and security, and facilitating legitimate trade; such exchange shall be without prejudice to exchanges of information that may take place between the Parties in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

3. Any exchange of information between the Parties under this Chapter shall be subject, *mutatis mutandis*, to the confidentiality of information and personal data protection requirements set out in Article 12 of the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters, as well as to any confidentiality and privacy requirements set out in the laws and regulations of the Parties.

ARTICLE 4.4

Mutual administrative assistance

The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

ARTICLE 4.5

Customs laws, regulations and procedures

1. Each Party shall ensure that its customs laws, regulations and procedures are:

(a) based upon international instruments and standards in the area of customs and trade, including the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as well as the SAFE Framework of Standards to Secure and Facilitate Global Trade of the WCO and the WCO Data Model, and if applicable, the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, done at Kyoto on the 18 May 1973 and adopted by the World Customs Organization Council in June 1999;

(b) based upon the protection and facilitation of legitimate trade through effective enforcement of and compliance with legislative requirements; and

(c) proportionate and non-discriminatory to avoid unnecessary burdens on economic operators, provide for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensure safeguards against fraud and illicit or damaging activities.

2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability in custom operations, each Party shall:

(a) simplify and review requirements and formalities, if possible, with a view to the rapid release and clearance of goods;

(b) work towards the further simplification and standardisation of data and documentation required by customs and other agencies in order to reduce the time and costs burdens for operators, including small and medium-sized enterprises; and

(c) ensure that the highest standards of integrity be maintained through the application of measures reflecting the principles of the relevant international conventions and instruments in this field.

ARTICLE 4.6

Release of goods

Each Party shall ensure that its customs authorities, border agencies or other competent authorities:

(a) provide for the prompt release of goods within a period no longer than required to ensure compliance with its customs and other trade-related laws and regulations and formalities;

(b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods;

(c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, subject to the provision of a guarantee, if required by its laws and regulations, in order to secure their final payment; and

(d) give appropriate priority to perishable goods when scheduling and performing any examinations that may be required.

ARTICLE 4.7

Simplified customs procedures

Each Party shall adopt or maintain measures allowing operators that are fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such measures may include customs declarations containing reduced sets of data or supporting documents, or periodical customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period after the release of those imported goods, or other procedures that provide for the expedited release of certain shipments.

ARTICLE 4.8

Authorised economic operators

1. Each Party shall establish or maintain a trade facilitation partnership programme for economic operators who meet specified criteria (hereinafter referred to as "authorised economic operators").

2. The specified criteria to qualify as authorised economic operators shall be related to compliance, or the risk of non-compliance, with requirements specified in laws, regulations or procedures of each Party. The specified criteria shall be published and may include:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of its operations and of the flow of goods by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven if the applicant has good financial standing, which enables it to fulfil its commitments, with due regard to the characteristics of the type of business activity concerned;

(d) proven competences or professional qualifications directly related to the activity carried out; and

(e) appropriate security and safety standards.

3. The specified criteria referred to in paragraph 2 shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between economic operators where the same conditions prevail, and shall allow the participation of small and medium-sized enterprises.

4. The trade facilitation partnership programme referred to in paragraph 1 shall include the following benefits:

(a) low documentary and data requirements, as appropriate;

(b) lower rate of physical inspections or expedited examinations, as appropriate;

(c) simplified release procedures and rapid release time, as appropriate;

(d) use of guarantees, including, if applicable, comprehensive guarantees or reduced guarantees; and

(e) control of the goods at the premises of the authorised economic operator or another place authorised by customs authorities.

5. The trade facilitation partnership programme referred to in paragraph 1 may also include additional benefits, such as:

(a) deferred payment of duties, taxes, fees and charges;

(b) a single customs declaration for all imports or exports in a given period; or

(c) availability of a dedicated contact point to provide assistance in customs matters.

ARTICLE 4.9

Data and documentation requirements

1. Each Party shall ensure that import, export and transit formalities, data and documentation requirements are:

(a) adopted and applied with a view to the rapid release of goods, provided that the conditions for the release are fulfilled;

(b) adopted and applied in a manner that aims to reduce the time and cost of compliance for traders or operators;

(c) the least trade-restrictive alternative, if two or more alternatives were reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required.

2. Each Party shall apply common customs procedures and use uniform customs documents for the release of goods throughout its customs territory.

ARTICLE 4.10

Use of information technologies and electronic payment

1. Each Party shall use information technologies that expedite procedures for the release of goods in order to facilitate trade between the Parties.

2. Each Party shall:

(a) make available, by electronic means, a customs declaration that is required for the import, export or transit of goods;

(b) allow a customs declaration to be submitted in electronic format;

(c) establish a means of providing for the electronic exchange of customs information with its trading community;

(d) promote the electronic exchange of data between operators and customs authorities, as well as other related agencies; and

(e) use electronic risk-management systems for assessment and targeting that enable its customs authorities to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods.

3. Each Party shall adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs authorities incurred upon importation and exportation.

ARTICLE 4.11

Risk management

1. Each Party shall adopt or maintain a risk-management system for customs control.

2. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for those controls as part of its risk management.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

ARTICLE 4.12

Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and other trade-related laws and regulations.

2. Each Party shall conduct post-clearance audits in a risk-based manner.

3. Each Party shall conduct post-clearance audits in a transparent manner. If an audit is conducted and conclusive results have been achieved, the Party shall, without delay, notify the person whose record has been audited of the results, the reasons for the results and the rights and obligations of that person.

4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

5. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

## ARTICLE 4.13

## Transparency

1. The Parties recognise the importance of timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade matters. To that end, each Party shall provide for appropriate consultations between administrations and the business community.

2. Each Party shall ensure that their respective customs and customs-related requirements and procedures continue to meet the needs of the business community, follow best practices, and remain the least trade restrictive possible.

3. Each Party shall provide for appropriate regular consultations between border agencies and traders or other stakeholders within its territory.

4. Each Party shall publish promptly in a non-discriminatory and accessible manner, including online, and prior to their application, new laws and regulations related to customs and trade facilitation matters, as well as amendments to, and interpretations of, those laws and regulations. Such laws and regulations, as well as their amendments and interpretations, shall include those relating to:

(a) importation, exportation and transit procedures, including port, airport, and other entry-point procedures, and required forms and documents;

(b) applied rates of duties and taxes of any kind imposed on, or in connection with, importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions against breaches of import, export or transit formalities;

(h) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(i) procedures related to the administration of tariff quotas;

(j) operating hours and procedures for customs offices at ports and border crossing points;

(k) contact points for information enquiries; and

(l) other relevant notices of an administrative nature in relation to subparagraphs (a) to (k).

5. Each Party shall ensure that there is a reasonable period of time between the publication[1] and the entry into force of new or amended laws, regulations and procedures and fees or charges.

6. Each Party shall establish or maintain one or more enquiry points to respond to reasonable enquiries from governments, operators and other interested parties on customs and other trade-related matters. The enquiry points shall respond to enquiries within a reasonable period of time set by each Party, which may vary depending on the nature or complexity of the request. A Party shall not require the payment of a fee for responding to enquiries or providing required forms and documents.

ARTICLE 4.14

Advance rulings

1. For the purposes of this Article, an "advance ruling" means a written decision provided to an applicant prior to the importation of a good covered by the application that sets out the treatment that the Party is to provide to the good at the time of importation with regard to:

(a) the tariff classification of the good;

[1] For greater certainty, "publication" refers to making laws and regulations publicly available.

(b) the origin of the good; and

(c) any other matters as the Parties may agree.

2. Each Party shall issue an advance ruling through its customs authorities. That advance ruling shall be issued in a reasonable and time-limited manner to the applicant that has submitted a written request, including in electronic format, containing all necessary information in accordance with the laws and regulations of the issuing Party.

3. The advance ruling shall be valid for a period of at least three years from the date in which it takes effect, unless the law, facts or circumstances supporting the original advance ruling have changed.

4. A Party may decline to issue an advance ruling if the facts and circumstances which form the basis of the advance ruling are under administrative or judicial review or if the application does not relate to any intended use of the advance ruling. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

6. If a Party revokes or modifies or invalidates an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. A Party shall only revoke, modify or invalidate an advance ruling with retroactive effect if the ruling was based on incomplete, incorrect, false or misleading information provided by the applicant.

7. An advance ruling issued by a Party shall be binding on that Party with respect to the applicant. The advance ruling shall also be binding on the applicant.

8. Each Party shall provide, upon written request of the applicant, a review of the advance ruling or of the decision to revoke, modify or invalidate that advance ruling.

9. Subject to confidentiality requirements in its laws and regulations, each Party shall make publicly available, including online, the substantive elements of its advance rulings.

## ARTICLE 4.15

## Transit and transhipment

1. Each Party shall ensure the facilitation and effective control of transit movements and transhipment operations through its territory.

2. Each Party shall promote and implement regional transit arrangements with a view to facilitating trade.

3. Each Party shall ensure cooperation between, and coordination of, its authorities and relevant agencies concerned to facilitate traffic in transit.

4. Each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods are to be released or cleared, provided all regulatory requirements are met.

## ARTICLE 4.16

### Customs brokers

1. A Party shall not introduce the mandatory use of customs brokers as a requirement for operators to fulfil their obligations with respect to the importation, exportation and transit of goods.

2. Each Party shall publish its measures on the use of customs brokers.

3. The Parties shall apply transparent, non-discriminatory and proportionate rules when licensing customs brokers.

## ARTICLE 4.17

### Pre-shipment inspections

The Parties shall not require the use of pre-shipment inspections, as defined in the Agreement on Pre-shipment Inspection in Annex 1A to the WTO Agreement, or any other inspection activity performed at destination, before customs clearance, by private companies.

ARTICLE 4.18

Appeals

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs authorities or other competent authorities affecting import or export of goods or goods in transit.

2. Appeal procedures may include administrative review by the supervising authority and judicial review of decisions taken at the administrative level in accordance with the laws and regulations of a Party.

3. Any person who has applied to the customs authorities or other competent authorities for a decision and has not obtained a decision on that application within the relevant time limit shall also be entitled to exercise the right of appeal.

4. Each Party shall ensure that its customs authorities or other competent authorities provide to persons to whom administrative decisions are issued, the reasons for those decisions in order to facilitate, where necessary, recourse to appeal procedures.

ARTICLE 4.19

Penalties

1. Each Party shall ensure that its customs laws and regulations provide that any penalties imposed for breaches of customs laws, regulations or procedural requirements are proportionate and non-discriminatory.

2. Each Party shall ensure that any penalty imposed for a breach of its customs laws, regulations, or procedural requirements is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed is based on the facts and circumstances of the case and is commensurate with the degree and severity of the breach. Each Party shall avoid incentives for, or conflicts of interest in, the assessment and collection of penalties.

4. Each Party is encouraged to consider prior disclosure to a customs authority of the circumstances of a breach of customs laws, regulations, or procedural requirements as a potential mitigating factor when establishing a penalty.

5. If a Party imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, it shall provide an explanation in writing to the person upon whom it imposes the penalty, specifying the nature of the breach and the applicable laws, regulations, or procedures pursuant to which the amount or range of penalty for the breach has been imposed.

ARTICLE 4.20

Sub-Committee on Customs, Trade Facilitation and Rules of Origin

1. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin ("Sub-Committee") is established pursuant to Article 33.4(1).

2. The Sub-Committee shall ensure the proper implementation of this Chapter, the border enforcement of intellectual property rights by competent authorities in accordance with Sub-Section 2 of Section C of Chapter 25, the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters and any additional customs-related provisions agreed between the Parties, and examine all matters arising from their application.

3. The functions of the Sub-Committee shall include:

(a) monitoring the implementation and administration of this Chapter and of Chapter 3;

(b) providing a forum to consult and discuss all matters concerning customs, including, in particular, customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;

(c) providing a forum to consult and discuss issues relating to rules of origin and administrative cooperation, and border measures for intellectual property rights; and

(d) enhancing cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation.

4. The Sub-Committee may make recommendations on the matters covered by paragraph 2. The Trade Council or the Trade Committee shall have the power to adopt decisions on mutual recognition of risk-management techniques, risk standards, security controls and trade facilitation partnership programmes, including aspects such as data transmission and mutually agreed benefits.

ARTICLE 4.21

Temporary admission

1. For the purposes of this Article, "temporary admission" means the customs procedure under which certain goods, including means of transport, can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character. Those goods must be imported for a specific purpose and must be intended for re-exportation within a specified period of time and without having undergone any change except normal depreciation due to the use made of them.

2. Each Party shall grant temporary admission, with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character[1], as provided for in its laws and regulations, to the following goods:

(a) goods for display or use at exhibitions, fairs, meetings or similar events, which means goods intended for display or demonstration at an event, goods intended for use in connection with the display of foreign products at an event, and equipment including interpretation equipment, sound and image recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses, and goods obtained at such events from goods placed under temporary admission; each Party may require a governmental authorisation or a guarantee or deposit to be issued before the event takes place;

[1] For greater certainty, the temporary admission of goods referred to in paragraphs 1 and 2 of this Article and brought into Chile from the European Union, shall not be subject to payment of the fee established in Article 107 of the Customs Ordinance of Chile (*Ordenanza de Aduanas*) contained in Decree 30 of the Ministry of Finance, Official Gazette, 4 June 2005, (*Decreto con Fuerza de Ley 30 del Ministerio de Hacienda, Diario Oficial, 04 de junio de 2005*).

(b) professional equipment, which means: equipment for the press or for sound or television broadcasting which is necessary for representatives of the press or of broadcasting or television organisations visiting the territory of another country for the purposes of reporting or in order to transmit or record material for specified programmes; cinematographic equipment necessary for a person visiting the territory of another country in order to make a specified film or films; any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task, insofar as it is not to be used for the industrial manufacture or packaging of goods or, except in the case of hand tools, for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects; ancillary apparatus for the equipment mentioned above, and accessories therefor; and component parts imported for repair of professional equipment temporarily admitted;

(c) goods imported in connection with a commercial operation where the importation does not in itself constitute a commercial operation, such as: packings which are imported filled for re-exportation empty or filled, or are imported empty for re-exportation filled; containers, whether or not filled with goods, and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or are imported separately to be re-exported with a container, and component parts intended for the repair of containers granted temporary admission; pallets; samples; advertising films;

(d) goods imported exclusively for educational, scientific or cultural purposes, such as scientific equipment, pedagogic material, welfare material for seafarers, and any other goods imported in connection with educational, scientific or cultural activities; spare parts for scientific equipment and pedagogic material which has been granted temporary admission; and tools specially designed for the maintenance, checking, gauging or repair of such equipment;

(e) personal effects, which means: all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes; and goods imported for sports purposes, such as sports requisites and other articles for use by travellers in sports contests or demonstrations or for training in the territory for which temporary admission is granted;

(f) tourist publicity material, which means goods imported for the purpose of encouraging the public to visit a foreign country, in particular in order to attend cultural, religious, touristic, sporting or professional meetings or demonstrations held there; each Party may require a guarantee or deposit to be provided for such goods;

(g) goods imported for humanitarian purposes, which means medical, surgical and laboratory equipment and relief consignments, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes; and

(h) animals imported for specific purposes, such as police dogs or horses, detector dogs, dogs for the blind, rescue dogs, animals for the purposes of participation in shows, exhibitions, contests, competitions or demonstrations, animals for the purposes of entertainment, such as animals for circus, touring (including pet animals of travellers), performance of work or transport, or for medical purposes, such as delivery of snake poison.

3. Each Party shall accept, in accordance with its laws and regulations[1], the temporary admission of the goods referred to in paragraph 2 as well as, regardless of their origin, ATA carnets issued in the other Party in accordance with the Convention on temporary admission, done at Istanbul on 26 June 1990, endorsed in the other Party and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the customs territory of the importing Party.

ARTICLE 4.22

Repaired goods

1. For the purposes of this Article, "repair" means any processing operation undertaken in respect of a good to remedy an operating defect or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair includes restoration and maintenance but does not include an operation or process that:

(a) destroys the essential characteristics of a good, or creates a new or commercially different good;

[1] For greater certainty, in the case of Chile, the ATA carnets shall be accepted as established by the Decree N° 103 of 2004 of the Ministry of Foreign Affairs (*Decreto N° 103 de 2004 del Ministerio de Relaciones Exteriores*), that enacts the "Convention on Temporary Admission" and its Annexes A, B1, B2 and B3, with the reservations duly indicated, and its amendments thereof.

(b) transforms an unfinished good into a finished good; or

(c) is used to improve or upgrade the technical performance of a good.

2. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its customs territory, after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.

3. Paragraph 2 does not apply to a good, imported in bond, into free trade zones, or in a similar status, which is thereafter exported for repair and is not re-imported in bond, into free trade zones, or in a similar status.

4. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair.

ARTICLE 4.23

Fees and formalities

1. Fees and other charges that a Party imposes on or in connection with the importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection in respect of domestic goods or taxation of imports or exports for fiscal purposes.

2. A Party shall not levy fees or other charges on or in connection with the importation or exportation of a good of the other Party on an *ad valorem* basis.

3. Each Party may impose charges or recover costs only if specific services are rendered, including the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information or the provision of information concerning the application of customs legislation;

(c) examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; or

(d) exceptional control measures, where such measures are necessary due to the nature of the goods or to a potential risk.

4. Each Party shall promptly publish all fees and charges it might impose in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties to become acquainted with them.

5. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

# CHAPTER 5

# TRADE REMEDIES

## SECTION A

## ANTI-DUMPING AND COUNTERVAILING DUTIES

### ARTICLE 5.1

### General provisions

1. The Parties affirm their rights and obligations under the Anti-Dumping Agreement and the SCM Agreement.

2. For the purposes of this Section, the preferential rules of origin under Chapter 3 do not apply.

### ARTICLE 5.2

### Transparency

1. Anti-dumping and anti-subsidy investigations and measures should be used in full compliance with the relevant WTO requirements set out in the Anti-Dumping Agreement and the SCM Agreement and should be based on a fair and transparent system.

2. Each Party shall ensure, as soon as practicable after any imposition of provisional measures and in any case before a final determination is made, full disclosure of all essential facts and considerations on which it bases a decision to apply definitive measures. Such disclosure is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Each Party shall disclose such essential facts and considerations in writing, and allow interested parties sufficient time to submit comments thereon.

3. Each interested party shall be granted the possibility to be heard in order to express its views during an anti-dumping or anti-subsidy investigation, provided that this does not unnecessarily delay the conduct of the investigation.

## ARTICLE 5.3

## Consideration of public interest

Each Party shall take into account the situation of its domestic industry, importers and their representative associations, representative users and representative consumer organisations to the extent that they have provided relevant information to the investigating authorities within the relevant timeframe. A Party may decide not to apply anti-dumping or countervailing measures on the basis of such information.

ARTICLE 5.4

Lesser duty rule

If a Party imposes an anti-dumping duty on the goods of the other Party, the amount of such duty shall not exceed the margin of dumping. Whenever possible, the anti-dumping duty should be less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 5.5

Non-application of dispute settlement

Chapter 31 does not apply to this Section.

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE 5.6

General provisions

The Parties affirm their rights and obligations pursuant to Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.

ARTICLE 5.7

Transparency and imposition of definitive measures

1. Notwithstanding Article 5.6, the Party initiating a global safeguard investigation or intending to apply global safeguard measures shall, on request of the other Party and provided that the latter has a substantial interest, immediately provide a written notification containing all pertinent information leading to the initiation of a global safeguard investigation or the application of global safeguard measures, including on the provisional findings, if relevant. Such notification is without prejudice to Article 3(2) of the Safeguards Agreement.

2. When imposing definitive global safeguard measures, each Party shall endeavour to impose them in a way that least affects bilateral trade, provided that the Party affected by the measures has a substantial interest as defined in paragraph 4.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive global safeguard measures are met, and intends to apply such measures, it shall notify the other Party and grant the possibility of holding bilateral consultations, provided that the other Party has a substantial interest as defined in paragraph 4. If no satisfactory solution has been reached within 15 days of the notification, the importing Party may adopt the appropriate global safeguard measures to remedy the problem.

4. For the purposes of this Article, a Party shall be considered to have a substantial interest when it is among the five largest suppliers of the imported good during the most recent three-year time period, measured in terms of either absolute volume or value.

ARTICLE 5.8

Non-application of dispute settlement

Chapter 31 does not apply to this Section.

SECTION C

BILATERAL SAFEGUARD MEASURES

SUB-SECTION 1

GENERAL PROVISIONS

ARTICLE 5.9

Definitions

For the purposes of this Section:

(a) "domestic industry" means, with respect to an imported good, the producers as a whole of like or directly competitive goods operating within the territory of a Party, or the producers whose collective output of like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(b) "transition period" means:

(i) a period of seven years from the date of entry into force of this Agreement; or

(ii) for any good for which the schedule in Annex 2 of the Party applying a bilateral safeguard measure provides for a tariff elimination period of seven years, the tariff elimination period for that good plus two years.

ARTICLE 5.10

Application of a bilateral safeguard measure

1. Notwithstanding Section B, if, as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive goods, the importing Party may take appropriate bilateral safeguard measures under the conditions and in accordance with the procedures laid down in this Section.

2. If the conditions in paragraph 1 are met, the importing Party may apply one of the following bilateral safeguard measures:

(a) the suspension of any further reduction of the rate of customs duty on the good concerned as provided for in this Agreement; or

(b) the increase in the rate of customs duty on the good concerned to a level which does not exceed the lesser of:

(i) the applied most-favoured-nation rate of customs duty on the good in effect at the time of application of the measure; or

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

ARTICLE 5.11

Standards for bilateral safeguard measures

1. A bilateral safeguard measure shall not be applied:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury or threat thereof to the domestic industry;

(b) for a period exceeding two years; the period may be extended by another two years if the competent investigating authority of the importing Party determines, in conformity with the procedures laid down in this Section, that the measure continues to be necessary to prevent or remedy serious injury or threat thereof to the domestic industry, provided that the total period of application of the bilateral safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or

(c) beyond the expiration of the transition period as defined in subparagraph (b) of Article 5.9.

2. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good in accordance with its schedule in Annex 2.

3. In order to facilitate adjustment of the industry concerned in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.

ARTICLE 5.12

Provisional bilateral safeguard measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis without complying with the requirements of Article 5.21(1), subject to a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause serious injury to the domestic industry.

2. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the Party applying the measure shall comply with the relevant procedural rules laid down in Sub-Section 2. The Party applying the provisional bilateral safeguard measure shall promptly refund any tariff increases if the investigation described in Sub-Section 2 does not result in a finding that the conditions of Article 5.10(1) have been met. The duration of the provisional bilateral safeguard measure shall be counted as part of the period described in subparagraph (b) of Article 5.11(1).

3. The Party applying a provisional bilateral safeguard measure shall inform the other Party upon taking such provisional measure and shall immediately refer the matter to the Trade Committee for examination if the other Party so requests.

ARTICLE 5.13

Compensation and suspension of concessions

1. A Party applying a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects. The Party applying a bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days of the start of the consultations, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of concessions having substantially equivalent effects on the trade of the other Party.

3. The Party whose goods are subject to the bilateral safeguard measure shall notify the other Party in writing at least 30 days before it suspends the application of concessions in accordance with paragraph 2.

4. The obligation to provide compensation pursuant to paragraph 1 and the right to suspend the application of concessions pursuant to paragraph 2 shall:

(a) not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports; and

(b) cease on the date of termination of the bilateral safeguard measure.

ARTICLE 5.14

Time lapse between two bilateral safeguard measures
and non-parallel application of safeguard measures

1. A Party shall not apply a bilateral safeguard measure as referred to in this Section to the import of a good that has previously been subject to such a measure, unless a period of time equal to half of the time during which the safeguard measure was applied for the immediately preceding period has elapsed. A bilateral safeguard measure that has been applied more than once on the same good may not be extended by another two years as provided for in subparagraph (b) of Article 5.11(1).

2. A Party shall not apply, with respect to the same good and during the same period:

(a) a bilateral safeguard measure or a provisional bilateral safeguard measure under this Agreement; and

(b) a global safeguard measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

ARTICLE 5.15

Outermost regions[1] of the European Union

1. If any good originating in Chile is being imported into the territory of one or more of the outermost regions of the European Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region concerned, the European Union, after having examined alternative solutions, may exceptionally apply bilateral safeguard measures limited to the territory of the region concerned.

2. For the purposes of paragraph 1, "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive goods. The determination of serious deterioration shall be based on objective factors, including the following:

(a) the increase in the volume of imports, in absolute terms or relative to domestic production and to imports from other sources; and

[1] On the date of entry into force of this Agreement, the outermost regions of the European Union are: Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article also applies to a country or an overseas territory that changes its status into that of an outermost region by way of a decision of the European Council in accordance with the procedure set out in Article 355(6) of the Treaty on the Functioning of the European Union, as from the date of adoption of that decision. In the event that an outermost region of the European Union, following that procedure, ceases to be an outermost region, this Article shall cease to be applicable to that country or overseas territory as from the date of the decision of the European Council in that regard. The European Union shall notify Chile of any change in the territories considered as outermost regions of the European Union.

(b) the effect of the imports referred to in paragraph 1 on the situation of the industry or economic sector concerned, including on the levels of sales, production, financial situation and employment.

3. Without prejudice to paragraph 1, other provisions of this Section applicable to bilateral safeguard measures are also applicable to any safeguard measures adopted under this Article. Any reference to "serious injury" in other provisions of this Section shall be understood as "serious deterioration" when applied in relation to outermost regions of the European Union.

## SUB-SECTION 2

## PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

### ARTICLE 5.16

### Applicable law

For the application of bilateral safeguard measures, the competent investigating authority of each Party shall comply with the provisions of this Sub-Section. In cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under the law of the Party of that authority.

ARTICLE 5.17

Initiation of a safeguard procedure

1. A competent investigating authority of a Party may initiate a procedure regarding bilateral safeguard measures ("safeguard procedure") upon a written application[1] by or on behalf of the domestic industry, or in exceptional circumstances on its own initiative.

2. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by domestic producers whose collective output constitutes more than 50 % of the total domestic production of the like or directly competitive goods produced by the portion of the domestic industry expressing either support for or opposition to the application. However, a competent investigating authority shall not initiate an investigation if the domestic producers expressing support for the application account for less than 25 % of the total domestic production of the like or directly competitive goods produced by the domestic industry.

3. Once a competent investigating authority has initiated the investigation, the written application referred to in paragraph 1 shall be made available to interested parties, except for any confidential information contained therein.

4. Upon initiation of a safeguard procedure, the competent investigating authority shall publish a notice of initiation of the safeguard procedure in the official journal of the Party. The notice shall identify:

(a) the entity which filed the written application, if applicable;

[1] For the European Union, that application may be filed by one or more Member States on behalf of the domestic industry.

(b) the imported good subject to the safeguard procedure;

(c) the subheading and tariff item number under which the imported good is classified;

(d) the type of proposed measure to be applied;

(e) the public hearing pursuant to subparagraph (a) of Article 5.20 or the period within which interested parties may submit a request to be heard pursuant to subparagraph (b) of Article 5.20;

(f) the place where the written application and any other non-confidential documents filed in the course of the proceeding may be inspected; and

(g) the name, address and telephone number of the office to be contacted for more information.

5. With respect to a safeguard procedure initiated pursuant to paragraph 1 on the basis of a written application, the competent investigating authority concerned shall not publish the notice required under paragraph 4 without first assessing carefully whether the written application meets the requirements of its domestic legislation and the requirements of paragraphs 1 and 2, and includes reasonable evidence that imports of a good originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that those imports cause or threaten to cause the alleged serious injury.

ARTICLE 5.18

Investigation

1. A Party shall apply a bilateral safeguard measure only after an investigation has been carried out by its competent investigating authority in accordance with Article 3(1) and subparagraph (c) of Article 4(2) of the Safeguards Agreement; to that end, Article 3(1) and subparagraph (c) of Article 4(2) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation referred to in paragraph 1, the Party shall comply with the requirements of subparagraph (a) of Article 4(2) of the Safeguards Agreement. To that end, subparagraph (a) of Article 4(2) of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

3. If a Party makes a notification pursuant to paragraph 1 of this Article and Article 3(1) of the Safeguards Agreement that it is applying or extending a bilateral safeguard measure, that notification shall include:

(a) evidence of serious injury or threat thereof caused by increased imports of a good originating in the other Party as a result of the reduction or elimination of a customs duty under this Agreement; the investigation shall demonstrate, on the basis of objective evidence, the existence of a causal link between the increased imports of the good concerned and the serious injury or threat thereof; known factors other than the increased imports shall also be examined to ensure that the serious injury or threat thereof caused by those other factors is not attributed to the increased imports;

(b) a precise description of the originating good subject to the bilateral safeguard measure, including its heading or subheading under the HS Code on which the schedules of tariff commitments in Annex 2 are based;

(c) a precise description of the bilateral safeguard measure;

(d) the date of the introduction of the bilateral safeguard measure, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure in accordance with Article 5.11(3); and

(e) in the event of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of a Party whose good is subject to a safeguard procedure under this Section, the Party conducting that procedure shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority has issued in relation to the safeguard procedure.

5. Each Party shall ensure that its competent investigating authority completes any investigation pursuant to this Article within 12 months of the date of its initiation.

ARTICLE 5.19

Confidential information

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon good cause being shown, be treated as confidential by the competent investigating authority. Such information shall not be disclosed without the permission of the interested party submitting it.

2. Interested parties providing confidential information are requested to furnish non-confidential summaries thereof or, if such parties indicate that the information cannot be summarised, the reasons therefor. The summaries shall be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the interested party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the competent investigating authority may disregard such information, unless it can be demonstrated to the satisfaction of that authority, in view of information from appropriate sources, that the information is correct.

ARTICLE 5.20

Hearings

In the course of each safeguard procedure, the competent investigating authority shall:

(a) hold a public hearing, after providing reasonable notice, to allow all interested parties and any representative consumer association to appear in person or to be represented by counsel in order to present evidence and to be heard regarding the alleged serious injury or threat thereof, and the appropriate remedy; or

(b) provide an opportunity to all interested parties to be heard if they have submitted, within the period laid down in the notice of initiation referred to in Article 5.17(4), a written request showing that they are likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

ARTICLE 5.21

Notifications, examination in the Trade Committee and publications

1. If a Party considers that one of the circumstances set out in Article 5.10(1) or 5.15(1) exists, it shall immediately refer the matter to the Trade Committee for examination. The Trade Committee may make any recommendation needed to remedy the circumstance which has arisen. If no recommendation has been made by the Trade Committee aimed at remedying the circumstance, or no other satisfactory solution has been reached within 30 days of the date on which the Party refers the matter to the Trade Committee, the importing Party may adopt appropriate bilateral safeguard measures to remedy the circumstance in accordance with this Section.

2. For the purposes of paragraph 1, the importing Party shall provide the exporting Party with all relevant information, including evidence of serious injury or threat thereof to domestic producers of the like and directly competitive good, caused by increased imports, a precise description of the good involved, and the proposed bilateral safeguard measure, its proposed date of imposition and expected duration.

3. The Party that adopts the bilateral safeguard measure shall publish its findings and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of that Party, including the description of the imported good and the situation which has given rise to the imposition of measures in accordance with Article 5.10(1) or 5.15(1), the causal link between such situation and the increased imports, and the form, level and duration of the measures.

## ARTICLE 5.22

### Acceptance of documents in English in safeguard procedures

In order to facilitate the submission of documents in safeguard procedures, the competent investigating authority of the Party in charge of the procedure shall accept documents submitted in English by interested parties, provided that those parties submit later, within a longer deadline set by the competent authority, a translation of the documents into the language of the safeguard procedure.

# CHAPTER 6

# SANITARY AND PHYTOSANITARY MEASURES

## ARTICLE 6.1

### Objectives

The objectives of this Chapter are:

(a) to safeguard human, animal and plant health in the territories of the Parties whilst facilitating trade in animals, animal products, plants, plant products and other products covered by sanitary and phytosanitary ("SPS") measures, between the Parties, by:

(i) improving transparency, communication and cooperation on SPS measures between the Parties;

(ii) establishing mechanisms and procedures for trade facilitation; and

(iii) further implementing the principles of the SPS Agreement;

(b) to cooperate in multilateral fora and on food safety, animal health and plant protection science;

(c) to cooperate on other sanitary or phytosanitary matters or in other fora.

ARTICLE 6.2

Multilateral obligations

The Parties reaffirm their rights and obligations under the WTO Agreement and, in particular, the SPS Agreement. Those rights and obligations shall underpin the activities of the Parties under this Chapter.

ARTICLE 6.3

Scope

This Chapter applies to:

(a) all SPS measures as defined in Annex A to the SPS Agreement in so far as they affect trade between the Parties;

(b) cooperation in multilateral fora recognised in the framework of the SPS Agreement;

(c) cooperation on food safety, animal health and plant protection science; and

(d) cooperation on any other sanitary or phytosanitary matter in any other fora, as the Parties may agree.

ARTICLE 6.4

Definitions

For the purposes of this Chapter and Annexes 6-A to 6-H:

(a) the definitions in Annex A to the SPS Agreement, as well as those in the Codex Alimentarius, within the framework of the World Organisation for Animal Health and in the International Plant Protection Convention, done at Rome on 17 November 1997, apply; and

(b) "protected zone" means, for a specific regulated pest, an officially defined geographical part of the territory of a Party in which that pest is known not to be established in spite of favourable conditions and its presence in other parts of the territory of that Party.

ARTICLE 6.5

Competent authorities

1. The competent authorities of the Parties are the authorities responsible for the implementation of the measures referred to in this Chapter, as set out in Annex 6-A.

2. In accordance with Article 6.12, the Parties shall inform each other of any significant changes in the structure, organisation or division of competences of their competent authorities.

ARTICLE 6.6

Recognition of status in respect of animal diseases
and infections in animals, and in respect of pests

1. The following applies to status in respect of animal diseases and infections in animals, including zoonoses:

(a) the importing Party shall recognise for trade purposes the animal health status of the exporting Party or its regions, as determined by the exporting Party in accordance with subparagraph (a)(i) of paragraph 1 of Annex 6-C, in respect of the animal diseases specified in Appendix 6-B-1;

(b) where a Party considers that its territory or any of its regions has a special status in respect of a specific animal disease other than the animal diseases set out in Appendix 6-B-1, it may request recognition of that status in accordance with the criteria set out in paragraph 3 of Annex 6-C; the importing Party may require guarantees in respect of imports of live animals and animal products which are appropriate with regard to the agreed status of that Party;

(c) the Parties recognise that the status of the territories or regions, or the status of a sector or sub-sector of the Parties, related to the prevalence or incidence of an animal disease other than the animal diseases set out in Appendix 6-B-1, or of infections in animals, or their associated risk, as appropriate, as defined by the international standard-setting organisations recognised in the framework of the SPS Agreement, constitutes the basis of trade between them; the importing Party may, as appropriate, request guarantees in respect of imports of live animals and animal products which are appropriate with regard to the defined status of that Party in accordance with the recommendations of the standard-setting organisations; and

(d) without prejudice to Articles 6.9 and 6.15, and unless the importing Party raises an explicit objection and requests supportive or additional information, consultations or verification in accordance with Articles 6.11 and 6.14, each Party shall adopt, without undue delay, the legislative and administrative measures necessary to allow trade on the basis of subparagraphs (a), (b) and (c) of this paragraph.

2. The following applies to status in respect of pests:

(a) the Parties recognise for trade purposes the pest status in respect of the pests specified in Appendix 6-B-2; and

(b) without prejudice to Articles 6.9 and 6.15, and unless the importing Party raises an explicit objection and requests supportive or additional information, consultations or verification in accordance with Articles 6.11 and 6.14, each Party shall, without undue delay, take the legislative and administrative measures necessary to allow trade on the basis of subparagraph (a) of this paragraph.

## ARTICLE 6.7

### Recognition of regionalisation decisions in respect of animal diseases and infections in animals and of pests

1. The Parties recognise the concept of regionalisation, and shall apply it to trade between them.

2. Regionalisation decisions in respect of terrestrial and aquatic animal diseases listed in Appendix 6-B-1 and pests listed in Appendix 6-B-2 shall be adopted in accordance with Annex 6-C.

3. As regards animal diseases, and in accordance with Article 6.14, the exporting Party seeking recognition by the importing Party of a regionalisation decision shall notify its measures establishing regionalisation with a full explanation and supporting data for its determinations and decisions.

4. Without prejudice to Article 6.15, and unless the importing Party raises an explicit objection and requests additional information, consultations or verification in accordance with Articles 6.11 and 6.14 within 15 working days of the receipt of the regionalisation decision, the Parties shall consider that decision as accepted.

5. The consultations referred to in paragraph 4 of this Article shall take place in accordance with Article 6.14(2). The importing Party shall assess the additional information within 15 working days of the receipt of the additional information. The verification referred to in paragraph 4 of this Article shall be carried out in accordance with Article 6.11 and within 25 working days of the receipt of the request for verification.

6. As regards pests, each Party shall ensure that trade in plants, plant products and other products takes account of the pest status recognised by the other Party. The exporting Party seeking recognition of a regionalisation decision by the other Party shall notify the other Party of its measures and decisions, as guided by the relevant International Standards for Phytosanitary Measures of the Food and Agriculture Organisation of the United Nations ("FAO"), including 4 "Requirements for the establishment of pest free areas", 8 "Determination of pest status in an area", and other international standards for phytosanitary measures as the Parties deem appropriate. Without prejudice to Article 6.15, and unless a Party raises an explicit objection and requests additional information, consultations or verification in accordance with Articles 6.11 and 6.14 within three months of the receipt of the regionalisation decision, the Parties shall consider that decision as accepted.

7. The consultations referred to in paragraph 4 of this Article shall take place in accordance with Article 6.14(2). The importing Party shall assess any additional information within three months of the receipt of such additional information. Each Party shall carry out the verification referred to in paragraph 4 of this Article in accordance with Article 6.11 and within 12 months of the receipt of a request for verification, taking into account the biology of the pest and the crop concerned.

8. After finalisation of the procedures set out in paragraphs 2 to 7 of this Article, and without prejudice to Article 6.15, each Party shall, without undue delay, take the legislative and administrative measures necessary to allow trade on that basis.

## ARTICLE 6.8

## Recognition of equivalence

1. The Parties may recognise equivalence in relation to an individual measure, a group of measures or systems applicable to a sector or sub-sector.

2. For the purpose of the recognition of equivalence, the Parties shall follow the consultation process referred to in paragraph 3. That process shall include an objective demonstration of equivalence by the exporting Party and an objective assessment of that demonstration by the importing Party with a view to the possible recognition of equivalence by the importing Party.

3. The Parties shall, within three months of the receipt by the importing Party of a request by the exporting Party for recognition of equivalence of one or more measures affecting one or more sectors or sub-sectors, initiate a consultation process which shall include the steps set out in Annex 6-E. In the event of multiple requests by the exporting Party, the Parties shall, on request of the importing Party, agree within the Sub-Committee referred to in Article 6.16 on a time schedule in accordance with which they shall initiate the process referred to in this paragraph.

4. Unless otherwise agreed, the importing Party shall finalise the assessment of equivalence, as set out in Annex 6-E, no later than 180 days after having received from the exporting Party its demonstration of equivalence as set out in that Annex. As an exception in the case of seasonal crops, it is justifiable to finalise the assessment of equivalence at a later time, if necessary in order to allow for the verification of phytosanitary measures during a suitable period of growth of a crop.

5. The priority sectors or sub-sectors of each Party for which a consultation process as referred to in paragraph 3 of this Article may be initiated, are to be set out, where appropriate in order of priority, in Appendix 6-E-1. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Council amend that list, including the order of priority.

6. The importing Party may withdraw or suspend a recognition of equivalence on the basis of an amendment by one of the Parties of measures affecting the equivalence concerned, provided that the following procedures are followed:

(a) in accordance with Article 6.13, the exporting Party shall inform the importing Party of any proposed amendment to a measure of the exporting Party for which equivalence is recognised and the likely effect of the proposed amendment on that equivalence; within 30 working days of the receipt of that information, the importing Party shall inform the exporting Party whether that equivalence would continue to be recognised on the basis of the proposed amendment; and

(b) in accordance with Article 6.13, the importing Party shall inform the exporting Party of any proposed amendment to a measure of the importing Party on which a recognition of equivalence has been based and the likely effect of the proposed amendment on that recognition of equivalence; if the importing Party does not continue to recognise that equivalence, the Parties may jointly establish the conditions for reinitiating the process referred to in paragraph 3 of this Article on the basis of the proposed amendment.

7. Without prejudice to Article 6.15, the importing Party shall not withdraw or suspend a recognition of equivalence before the proposed amendment of either Party enters into force.

8. The recognition of equivalence, or the withdrawal or suspension of a recognition of equivalence, rests solely with the importing Party acting in accordance with its administrative and legislative framework including, as regards plants, plant products and other goods, appropriate communications in accordance with the FAO International Standard for Phytosanitary Measures 13 "Guidelines for the notification of non-compliances and emergency action" and other international standards for phytosanitary measures, as appropriate. The importing Party shall provide the exporting Party with a full explanation in writing and the supporting data in respect of the determinations and decisions covered by this Article. In case of non-recognition of equivalence, or withdrawal or suspension of a recognition of equivalence, the importing Party shall inform the exporting Party of the conditions for reinitiating the process referred to in paragraph 3.

ARTICLE 6.9

Transparency and trade conditions

1. The Parties shall apply general import conditions. Without prejudice to the decisions taken in accordance with Article 6.7, the import conditions of the importing Party shall be applicable to the territory of the exporting Party. In accordance with Article 6.13, the importing Party shall inform the exporting Party of its SPS import requirements. That information shall include, as appropriate, the models for any official certificates or attestations required by the importing Party.

2. Each Party shall, for the notification of amendments or proposed amendments to the conditions referred to in paragraph 1 of this Article, comply with Article 7 of and Annex B to the SPS Agreement and subsequent decisions adopted by the WTO Committee on Sanitary and Phytosanitary Measures. Without prejudice to Article 6.15, the importing Party shall take into account the transport time between the territories of the Parties when establishing the date of entry into force of any amendments to the conditions referred to in paragraph 1 of this Article.

3. If the importing Party fails to comply with the notification requirements referred to in paragraph 2, it shall continue to accept, for 30 days after the date of entry into force of the amendment concerned, any official certificate or attestation guaranteeing the import conditions applicable prior to that amendment.

4. When Chile grants market access to one or more sectors or sub-sectors of the European Union in accordance with the conditions referred to in paragraph 1, Chile shall approve any subsequent export requests submitted by the Member States on the basis of a comprehensive dossier of information available to the European Commission, known as the Country profile, unless Chile, in limited specific circumstances and when deemed appropriate, requests additional information.

5. Within 90 days of a recognition of equivalence in accordance with Article 6.8, a Party shall take the legislative and administrative measures necessary to implement that recognition of equivalence in order to allow trade between the Parties in sectors and sub-sectors in which the importing Party recognises all SPS measures of the exporting Party as equivalent. For the animals, animal products, plants, plant products and other products covered by the SPS measures concerned, the model for the official certificate or official document required by the importing Party may be replaced by a certificate as provided for in Annex 6-H.

6. For the products referred to in paragraph 5 in sectors or sub-sectors for which one or some but not all measures are recognised as equivalent, the Parties shall continue trade between them on the basis of compliance with the conditions referred to in paragraph 1. On request of the exporting Party, paragraph 7 shall apply.

7. For the purposes of this Chapter, the importing Party shall not subject imports of products of the other Party to import licences.

8. As regards general import conditions affecting trade between the Parties, the Parties shall, on request of the exporting Party, enter into consultations in accordance with Article 6.14, in order to establish alternative or additional import conditions of the importing Party. The Parties shall, if appropriate, base those alternative or additional import conditions on measures of the exporting Party recognised as equivalent by the importing Party. If the Parties agree on alternative or additional import conditions, the importing Party shall, within 90 days of their establishment, take the legislative or administrative measures necessary to allow imports on that basis.

9. As regards imports of animals, animal products, products of animal origin and animal by-products, the importing Party shall, on request of the exporting Party accompanied by the appropriate guarantees, approve, without prior inspection, and in accordance with Annex 6-D, establishments which are situated on the territory of the exporting Party. Unless the exporting Party requests additional information, the importing Party shall, within 30 working days of the receipt of the request for approval accompanied by the appropriate guarantees, take the legislative or administrative measures necessary to allow imports on that basis.

10. The initial list of establishments shall be approved by a Party in accordance with Annex 6-D.

11. On request of a Party, the other Party shall provide a full explanation and supporting data for the determinations and decisions covered by this Article.

## ARTICLE 6.10

## Certification procedures

1. For the purposes of certification procedures, the Parties shall comply with the principles and criteria set out in Annex 6-H.

2. A Party shall issue the certificates or official documents referred to in paragraphs 1, 5 and 6 of Article 6.9 as set out in Annex 6-H.

3. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Committee or Trade Council adopt a decision establishing rules to be followed in the case of electronic certification, or withdrawal or replacement of certificates.

ARTICLE 6.11

Verification

1. For the purposes of the effective implementation of this Chapter, each Party shall have the right:

(a) to carry out, in accordance with the guidelines set out in Annex 6-F, a verification of all or a part of the total control programme of the competent authorities of the other Party; the expenses of that verification shall be borne by the Party carrying out the verification;

(b) as from a date to be determined by the Parties, to request from the other Party all or a part of that Party's total control programme and a report concerning the results of the controls carried out under that programme; and

(c) for laboratory tests related to products of animal origin, to request the participation of the other Party in the periodical inter-comparative test programme for specific tests organised by the reference laboratory of the requesting Party; the costs related to that participation shall be borne by the participating Party.

2. Each Party may share the results and conclusions of its verifications with third countries and make them publicly available.

3. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Council amends Annex 6-F, taking due account of relevant work carried out by international organisations.

4. The results of the verifications referred to in this Article may contribute to measures by a Party or the Parties referred to in Articles 6.6 to 6.9 and 6.12.

## ARTICLE 6.12

### Import checks and inspection fees

1. Import checks conducted by the importing Party on consignments from the exporting Party shall respect the principles set out in Annex 6-G. The results of those checks may contribute to the verification process referred to in Article 6.11.

2. The frequency rates of physical import checks applied by each Party are set out in Annex 6-G. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Council amend Annex 6-G.

3. A Party may deviate from the frequency rates set out in Annex 6-G, within its competences and in accordance with its laws and regulations, as a result of progress made in accordance with Articles 6.8 and 6.9, or as a result of verifications, consultations or other measures provided for in this Chapter.

4. Inspection fees shall not exceed the costs incurred by the competent authority for performing import checks and shall be equitable in relation to fees charged for the inspection of similar domestic products.

5. The importing Party shall inform the exporting Party of any amendment, including the reasons for that amendment, to the measures affecting import checks and inspection fees and of any significant changes in the administrative procedure for those checks.

6. For the products referred to in Article 6.9(5), the Parties may agree to reciprocally reduce the frequency of physical import checks.

7. The Sub-Committee may recommend to the Trade Council the conditions for approval of each Party's import checks with a view to adapting their frequency or replacing them, to be applicable as of a certain date. Those conditions shall be included in Annex 6-G by a decision of the Trade Council. As from that date, the Parties may approve each other's import checks for certain products with a view to reducing their frequency or replacing them.

## ARTICLE 6.13

## Information exchange

1. The Parties shall exchange information relevant to the implementation of this Chapter on a systematic basis with a view to developing standards, providing assurance, engendering mutual confidence and demonstrating the effectiveness of the programmes controlled. If appropriate, the exchange of information may include exchange of officials.

2. The Parties shall also exchange information on other relevant topics, including:

(a) significant events concerning products covered by this Chapter, including the information exchange provided for in Articles 6.8 and 6.9;

(b) the results of the verification procedures provided for in Article 6.11;

(c) the results of the import checks provided for in Article 6.12 in the case of rejected or non-compliant consignments of animals and animal products;

(d) scientific opinions relevant to this Chapter and produced under the responsibility of a Party; and

(e) rapid alerts relevant to trade within the scope of this Chapter.

3. A Party shall submit scientific papers or data to the relevant scientific forum to substantiate any views or claims made in respect of a matter arising under this Chapter for evaluation in a timely manner. The results of that evaluation shall be made available to the Parties.

4. When the information referred to in this Article has been made available by a Party by notification to the WTO in accordance with Article 7 of and Annex B to the SPS Agreement, or on its official, publicly accessible and fee-free website, the information provided for in this Article shall be considered as exchanged.

5. For pests of known and immediate danger to a Party, direct communication to that Party shall be made by mail or e-mail. The Parties shall follow the guidance provided by the FAO International Standard for Phytosanitary Measures 17 "Pest reporting".

6. The Parties shall exchange the information referred to in this Article via e-mail, fax or mail.

ARTICLE 6.14

Notification and consultations

1. A Party shall, within two working days of any serious or significant human, animal or plant health risk, including food control emergencies or situations where there is a clearly identified risk of serious health effects associated with the consumption of animal or plant products, notify the other Party of that risk and in particular of the following:

(a) measures affecting regionalisation decisions as referred to in Articles 6.7;

(b) the presence or evolution of an animal disease or pest listed in Annex 6-B;

(c) findings of epidemiological importance or important associated risks with respect to animal diseases and pests which are not listed in Annex 6-B, or which are new animal diseases or pests; and

(d) additional measures beyond the basic requirements of their respective measures taken to control or eradicate animal diseases or pests or to protect public health, and any changes in prophylactic policies, including vaccination policies.

2. Where a Party has serious concerns regarding a risk to human, animal or plant health, that Party may request consultations with the other Party regarding the situation. Those consultations shall take place as soon as possible and, in any case, within 13 working days of the request. In those consultations, each Party shall endeavour to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution consistent with the protection of human, animal or plant health.

3. A Party may request that the consultations referred to in paragraph 2 of this Article shall be held by video or audio conference. The requesting Party shall prepare the minutes of the consultations, which shall be subject to approval by the Parties. For the purposes of that approval, Article 6.13(6) applies.

## ARTICLE 6.15

## Safeguard clause

1. If the exporting Party takes domestic measures to control a cause likely to constitute a serious risk to human, animal or plant health, that Party shall, without prejudice to paragraph 2, take equivalent measures to prevent the introduction of the risk into the territory of the importing Party.

2. The importing Party may, on the grounds of serious risk to human, animal or plant health, take provisional measures necessary for the protection of human, animal or plant health. For consignments that are in transport between the Parties when such provisional measures apply, the importing Party shall consider the most suitable and proportionate solution to avoid unnecessary disruptions to trade.

3. The Party taking measures as referred to in this Article shall notify the other Party thereof within one working day of the decision to implement those measures. Upon request of a Party and in accordance with Article 6.14(2), the Parties shall hold consultations regarding the situation within 13 working days of the notification. The Parties shall take due account of any information provided during those consultations and shall endeavour to avoid unnecessary disruptions to trade, considering, if applicable, the outcome of consultations under Article 6.14(2).

ARTICLE 6.16

Sub-Committee on Sanitary and Phytosanitary Measures

1. The Sub-Committee on Sanitary and Phytosanitary Measures ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties with responsibility for SPS matters.

2. The Sub-Committee shall:

(a) monitor the implementation and consider matters relating to this Chapter, and examine all matters which may arise in relation to its implementation; and

(b) make recommendations to the Trade Council for amendments to Annexes pursuant to subparagraph (a) of Article 33.1(6), in particular in the light of progress made under the consultations and procedures provided for in this Chapter.

3. The Sub-Committee shall agree on the actions to take in pursuing the objectives of this Chapter. The Sub-Committee shall establish objectives and milestones for those actions. The Sub-Committee shall evaluate the results of those actions.

4. The Sub-Committee may recommend that the Trade Council or Trade Committee, pursuant to Article 33.4(2), establish technical working groups, as appropriate, consisting of expert-level representatives of each Party, which shall identify and address technical and scientific issues arising from the application of this Chapter.

5. The Sub-Committee may recommend that the Trade Council or Trade Committee adopt a decision on specific rules of procedures for this Sub-Committee in view of the specificity of SPS matters.

ARTICLE 6.17

Cooperation in multilateral fora

1. The Parties shall promote cooperation in multilateral fora relevant to SPS matters, in particular in international standard-setting organisations recognised in the framework of the SPS Agreement.

2. The Sub-Committee established in Article 6.16 shall be the relevant forum for exchange of information and cooperation on matters referred to in paragraph 1 of this Article.

ARTICLE 6.18

Cooperation on food safety, animal health and plant protection science

1. The Parties shall endeavour to facilitate scientific cooperation between bodies of the Parties responsible for scientific evaluation in the areas of food safety, animal health and plant protection.

2. The Sub-Committee may recommend that the Trade Council or Trade Committee, pursuant to Article 33.4(2), establish a technical working group on scientific cooperation as referred to in paragraph 1 of this Article ("the working group"), consisting of expert-level representatives of the scientific bodies referred to in paragraph 1 of this Article, appointed by each Party.

3. The Trade Council or Trade Committee establishing the working group shall define the mandate, scope and work programme of that working group.

4. The working group may exchange information, including on:

(a) scientific and technical information; and

(b) data collection.

5. The work carried out by the working group shall not affect the independence of the national or regional agencies of each Party.

6. Each Party shall ensure that the representatives appointed pursuant to paragraph 2 are not affected by conflicts of interest under that Party's law.

ARTICLE 6.19

Territorial application for the European Union

1. By way of derogation from Article 33.8, for the European Union this Chapter applies to the territories of Member States as laid down in Annex I to Regulation (EU) 2017/625 of the European Parliament and of the Council[1], and as regards plants, plant products and other goods, as laid down in Article 1(3) of Regulation (EU) 2016/2031 of the European Parliament and of the Council[2].

2. The Parties understand that as regards the territory of the European Union, its specificity shall be taken into account and the European Union shall be recognised as a single entity.

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1 Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ EU L 95, 7.4.2017, p. 1).

2 Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ EU L 317, 23.11.2016, p. 4).

# CHAPTER 7

# COOPERATION ON SUSTAINABLE FOOD SYSTEMS

## ARTICLE 7.1

### Objective

The objective of this Chapter is to establish close cooperation between the Parties to engage in the transition towards sustainability of their respective food systems. The Parties recognise the importance of strengthening policies and defining programmes that contribute to the development of sustainable, inclusive, healthy and resilient food systems and of the role of trade in pursuing that objective.

## ARTICLE 7.2

### Scope

1. This Chapter applies to cooperation between the Parties to improve the sustainability of their respective food systems.

2. This Chapter sets out provisions for cooperation on specific aspects of sustainable food systems, including:

(a) the sustainability of the food chain and reduction of food loss and waste;

(b) the fight against food fraud in the food chain;

(c) animal welfare;

(d) the fight against antimicrobial resistance; and

(e) the reduction of the use of fertilizers and chemical pesticides for which a risk assessment has shown that they cause unacceptable risks to health or the environment.

3. This Chapter also applies to the cooperation of the Parties in multilateral fora.

4. This Chapter applies without prejudice to the application of other Chapters related to food systems or to sustainability, in particular Chapters 6, 9 and 26.

ARTICLE 7.3

Definitions

1. For the purposes of this Chapter:

(a) "food chain" means all the steps from primary production to sale to the final consumer, including production, processing, manufacturing, transport, import, storage, distribution and sale to the final consumer;

(b) "primary production" means the production, rearing or growing of primary products, including harvesting, milking and farm animal production prior to slaughter, as well as hunting and fishing and the harvesting of wild products; and

(c) "sustainable food system" means a food system that provides safe, nutritious and sufficient food for all without compromising the economic, social and environmental bases required to generate food security and nutrition for future generations; such a sustainable food system:

(i) is profitable (economic sustainability);

(ii) has broad-based benefits for society (social sustainability); and

(iii) has a positive or neutral impact on the natural environment, including on climate change (environmental sustainability).

ARTICLE 7.4

Sustainability of the food chain and reduction in food loss and waste

1. The Parties recognise the interlinkage between current food systems and climate change. The Parties shall cooperate to reduce the adverse environmental and climate effects of food systems as well as to strengthen their resilience.

2. The Parties recognise that food loss and waste have a negative impact on the social, economic and environmental dimensions of food systems.

3. The Parties shall cooperate in areas which may include:

(a) sustainable food production, including agriculture, the improvement of animal welfare, the promotion of organic farming and the reduction of the use of antimicrobials, fertilizers and chemical pesticides for which a risk assessment shows that they pose an unacceptable risk to health or the environment;

(b) sustainability of the food chain, including food production, processing methods and practices;

(c) healthy and sustainable diets, reducing the carbon footprint of consumption;

(d) decrease of the greenhouse gas emissions of food systems, increase of carbon sinks, and the reversal of biodiversity loss;

(e) innovation and technologies that contribute to adaptation and resilience to the impacts of climate change;

(f) development of contingency plans to ensure security of food supply in times of crisis; and

(g) reduction of food loss and waste in line with the Sustainable Development Goal 12, target 12.3, as defined in the 2030 Agenda.

4. Cooperation pursuant to this Article may include exchange of information, expertise and experiences, as well as cooperation in research and innovation.

ARTICLE 7.5

Fight against fraud in the food chain

1. The Parties recognise that fraud may affect the safety of the food chain, jeopardise the sustainability of food systems and undermine fair commercial practice, consumer confidence and the resilience of food markets.

2. The Parties shall cooperate to detect and avoid fraud in the food chain by:

(a) exchanging information and experiences to improve the detection and countering of fraud in the food chain; and

(b) providing assistance necessary to gather evidence of practices that are or appear to be non-compliant with their rules, or that pose a risk to human, animal or plant health or to the environment, or that mislead customers.

ARTICLE 7.6

Animal welfare

1. The Parties recognise that animals are sentient beings and that the use of animals in food production systems comes with a responsibility for their wellbeing. The Parties shall respect trade conditions for farmed animals and animal products that are aimed to protect animal welfare.

2. The Parties aim to reach a common understanding on the international animal welfare standards of the World Organisation for Animal Health ("WOAH").

3. The Parties shall cooperate on the development and implementation of animal welfare standards on the farm, during transport, and at slaughter and killing of animals, in accordance with their law.

4. The Parties shall strengthen their research collaboration in the area of animal welfare to further develop science-based animal welfare standards.

5. The Sub-Committee referred to in Article 7.8 may address other matters in the area of animal welfare.

6. The Parties shall exchange information, expertise and experiences in the area of animal welfare.

7. The Parties shall cooperate in WOAH and may cooperate in other international fora, with the aim of promoting further development of animal welfare standards and best practices and their implementation.

8. Pursuant to Article 33.4(2), the Trade Council or Trade Committee may establish a technical working group to support the Sub-Committee referred to in Article 7.8 in the implementation of this Article.

ARTICLE 7.7

Fight against antimicrobial resistance

1. The Parties recognise that antimicrobial resistance is a serious threat to human and animal health and that the use, especially the misuse and overuse of antimicrobials in animals, contributes to the overall development of antimicrobial resistance and represents a major risk to public health. The Parties recognise that the nature of the threat requires a transnational approach.

2. Each Party shall phase out the use of antimicrobial medicinal products as growth promoters.

3. Each Party shall, in accordance with the One Health approach:

(a) have regard to existing and future guidelines, standards, recommendations and actions developed in relevant international organisations in the development of initiatives and national plans aiming to promote the prudent and responsible use of antimicrobials in animal production and in veterinary practice;

(b) promote, where the Parties jointly so decide, responsible and prudent use of antimicrobials, including reducing the use of antimicrobials in animal production and phasing out the use of antimicrobials as growth promoters in animal production; and

(c) support the development and implementation of international action plans on the fight against antimicrobial resistance, if the Parties consider that appropriate.

4. Pursuant to Article 33.4(2), the Trade Council or Trade Committee may establish a technical working group to support the Sub-Committee referred to in Article 7.8 in the implementation of this Article.

## ARTICLE 7.8

## Sub-Committee on Sustainable Food Systems

1. The Sub-Committee on Sustainable Food Systems ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties with responsibility for sustainable food systems.

2. The Sub-Committee shall monitor the implementation of this Chapter and examine all matters which arise in relation to its implementation.

3. The Sub-Committee shall agree on the actions to take in pursuing the objectives of this Chapter. The Sub-Committee shall establish objectives and milestones for those actions and monitor the Parties' progress in establishing sustainable food systems. The Sub-Committee shall every period evaluate the results of the implementation of those actions.

4. The Sub-Committee may recommend to the Trade Council or Trade Committee, pursuant to Article 33.4(2), the establishment of technical working groups consisting of expert-level representatives of each Party in order to identify and address technical and scientific issues arising from the application of this Chapter.

5. The Sub-Committee shall recommend that the Trade Committee establish rules to mitigate potential conflicts of interest for the participants of the meetings of the Sub-Committee and those of any technical working group referred to in this Chapter. The Trade Committee shall adopt a decision establishing those rules.

## ARTICLE 7.9

### Cooperation in multilateral fora

1. The Parties shall cooperate, as appropriate, in multilateral fora to foster the global transition towards sustainable food systems that contribute to the achievement of internationally agreed objectives on the environment, nature and climate protection.

2. The Sub-Committee shall be the forum to exchange information and cooperate in the matters covered by paragraph 1 of this Article.

## ARTICLE 7.10

### Additional provisions

1. The activities of the Sub-Committee shall not affect the independence of the national or regional agencies of the Parties.

2. Nothing in this Chapter shall affect the rights or obligations of each Party to protect confidential information, in accordance with the law of each Party. When a Party submits information considered confidential under its law to the other Party pursuant to this Chapter, that other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

3. Fully respecting each Party's right to regulate, nothing in this Chapter shall be construed as obliging a Party to:

(a) modify its import requirements;

(b) deviate from domestic procedures on the preparation and adoption of regulatory measures;

(c) take action that would undermine or impede the timely adoption of regulatory measures to achieve public policy objectives; or

(d) adopt any particular regulatory outcome.

# CHAPTER 8

# ENERGY AND RAW MATERIALS

## ARTICLE 8.1

### Objective

The objective of this Chapter is to promote dialogue and cooperation in the energy and raw materials sectors to the mutual benefit of the Parties, to foster sustainable and fair trade and investment ensuring a level playing field in those sectors, and to strengthen the competitiveness of related value chains, including value addition, in accordance with this Agreement.

## ARTICLE 8.2

### Principles

1. Each Party retains the sovereign right to determine whether areas within its territory, as well as in the exclusive economic zone, are available for exploration, production and transportation of energy goods and raw materials.

2. In accordance with this Chapter, the Parties reaffirm their right to regulate within their respective territories in order to achieve legitimate policy objectives in the areas of energy and raw materials.

ARTICLE 8.3

Definitions

For the purposes of this Chapter and Annexes 8-A and 8-B:

(a) "authorisation" means the permission, licence, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory in compliance with the requirements set out in the authorisation;

(b) "balancing" means all actions and processes, in all timelines, through which system operators ensure, in a continuous way, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;

(c) "energy goods" means the goods from which energy is generated and that are listed by the corresponding HS code in Annex 8-A;

(d) "hydrocarbons" means the goods listed by the corresponding HS code in Annex 8-A;

(e) "raw materials" means: substances used in the manufacture of industrial products, including ores, concentrates, slags, ashes and chemicals; unwrought, processed and refined materials; metal waste; scrap and remelting scrap, listed by the corresponding HS chapter in Annex 8-A;

(f) "renewable energy" means energy produced from solar, wind, hydro, geothermal, biological or ocean sources or other renewable ambient sources;

(g) "renewable fuels" means biofuels, bioliquids, biomass fuels and renewable fuels of non-biological origin, including renewable synthetic fuels and renewable hydrogen;

(h) "standards" means standards within the meaning of Chapter 9;

(i) "system operator" means:

(i) for the European Union: a person that is responsible for operating, and ensuring the maintenance and development of, the electricity distribution or transmission system in a given area, and for ensuring the long-term ability of such systems; and

(ii) for Chile: an independent body responsible for coordinating the operation of interconnected electrical systems, which ensures the efficient economic performance and safety and reliability of the electric system and provides open access to the transmission system; and

(j) "technical regulations" means technical regulations within the meaning of Chapter 9.

ARTICLE 8.4

Import and export monopolies

A Party shall not designate or maintain a designated import or export monopoly. For the purposes of this Article, the term "import or export monopoly" means the exclusive right or grant of authority by a Party to an entity to import energy goods or raw materials from, or export energy goods or raw materials to, the other Party[1].

ARTICLE 8.5

Export pricing[2]

1. A Party shall not impose a higher price for exports of energy goods or raw materials to the other Party than the price charged for such goods when destined for the domestic market, by means of any measure, including licences or minimum price requirements.

[1] For greater certainty, this Article is without prejudice to Chapters 10, 11 and 22 and the schedules in Annexes 10-A to 10-C and 22, and does not apply to a right that results from granting an intellectual property right.

[2] For greater certainty, this Article is without prejudice to Annex 22.

2. Notwithstanding paragraph 1 of this Article, Chile may introduce or maintain measures with the objective of fostering value addition by supplying raw materials to industrial sectors at preferential prices so that they can emerge within Chile, provided that such measures satisfy the conditions set out in Annex 8-B.

## ARTICLE 8.6

### Domestic regulated prices

1. The Parties recognise the importance of competitive energy markets in delivering a wide choice in the supply of energy goods and in enhancing consumer welfare. The Parties also recognise that regulatory needs and approaches may differ between markets.

2. Further to paragraph 1, each Party shall, in accordance with its laws and regulations, ensure that the supply of energy goods is based on market principles.

3. A Party may only regulate the price charged for the supply of energy goods by imposing a public service obligation.

4. If a Party imposes a public service obligation, it shall ensure that such obligation is clearly defined, transparent and non-discriminatory, and does not go beyond what is necessary to achieve the objectives of the public service obligation.

ARTICLE 8.7

Authorisation for exploration and production of energy goods and raw materials

1. Without prejudice to Chapter 13, if a Party requires an authorisation to explore or produce energy goods and raw materials, that Party shall ensure that such authorisation is granted following a public and non-discriminatory procedure[1].

2. That Party shall publish, *inter alia*, the type of authorisation, the relevant area or part thereof, and the proposed date or time limit for granting the authorisation, in such a manner as to enable potentially interested applicants to submit applications.

3. A Party may derogate from paragraph 2 of this Article and Article 13.3 in any of the following cases relating to hydrocarbons:

(a) the area has been subject to a previous procedure which has not resulted in an authorisation being granted;

(b) the area is available on a permanent basis for the exploration or production of energy goods and raw materials; or

(c) an authorisation granted has been relinquished before its expiration date.

[1] For greater certainty, in the event of any inconsistency between this Article and Chapters 10 and 11 and Annexes 10-A, 10-B and 10-C, those Chapters and Annexes shall prevail to the extent of the inconsistency.

4. Each Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind. The financial contribution or contribution in kind shall be fixed in such a manner as to not interfere with the management and the decision-making process of such entity.

5. Each Party shall ensure that the applicant, where its application is rejected, is provided with the reasons for the rejection so as to enable that applicant to have recourse to procedures for appeal or review where necessary. The procedures for appeal or review shall be made public in advance.

ARTICLE 8.8

Assessment of environmental impact

1. A Party shall ensure that an assessment of environmental impact[1] is carried out prior to granting authorisation for a project or activity relating to energy or raw materials that may have a significant impact on population, human health, biodiversity, land, soil, water, air or climate, or cultural heritage or landscape. That assessment shall identify and assess such significant impacts.

2. Each Party shall ensure that relevant information is available to the public as part of the process for the assessment of environmental impact, and shall provide time and opportunity to the public to participate in that process and to submit comments.

3. Each Party shall publish and take into account the findings of the assessment of environmental impact prior to granting the authorisation for the project or activity.

[1] For Chile, "assessment of environmental impact" means the study of the environmental impact, as defined in Law 19.300 Title 1, Article 2, literal (i), or its successor, and as regulated by Article 11 of the same Law.

ARTICLE 8.9

Third-party access to energy transport infrastructure

1. Each Party shall ensure that system operators in its territory grant non-discriminatory access to the energy infrastructure for the transport of electricity to any entity of a Party. To the furthest extent possible, access to the electricity transport infrastructure shall be granted within a reasonable period of time of the date of the request for access by that entity.

2. Each Party shall enable, in accordance with its laws and regulations, an entity of a Party to access and use the electricity transport infrastructure for the transport of electricity on reasonable and non-discriminatory terms and conditions, including non-discrimination between types of electricity sources, and at cost-reflective tariffs. Each Party shall publish the terms and conditions for the access to, and use of, the electricity transport infrastructure.

3. Notwithstanding paragraph 1, a Party may introduce or maintain in its laws and regulations specific derogations from the right to third-party access on the basis of objective criteria provided that they are necessary to fulfil a legitimate policy objective. Such derogations shall be published before they start to apply.

4. The Parties recognise the relevance of the rules set out in paragraphs 1, 2 and 3 also to gas infrastructure. A Party that does not apply such rules with regard to gas infrastructure shall endeavour to do so, in particular with regard to transport of renewable fuels, while acknowledging differences in market maturity and organisation.

ARTICLE 8.10

Access to infrastructure for suppliers of electricity
produced from renewable energy sources

1. Without prejudice to Articles 8.7, 8.9 and 8.11, each Party shall ensure that renewable energy suppliers of the other Party are accorded access to, and use of, the electricity network for renewable electricity generation facilities located within its territory on reasonable and non-discriminatory terms and conditions.

2. For the purposes of paragraph 1, each Party shall ensure, in accordance with its laws and regulations, that its transmission undertakings and system operators, with respect to renewable electricity suppliers of the other Party:

(a) enable a connection between new renewable electricity generation facilities and the electricity network without imposing discriminatory terms and conditions;

(b) enable the reliable use of the electricity network;

(c) provide balancing services; and

(d) ensure that appropriate grid and market-related operational measures are in place in order to minimise the curtailment of electricity produced from renewable energy sources.

3. Paragraph 2 is without prejudice to each Party's legitimate right to regulate within its territory in order to achieve legitimate policy objectives, such as the need to maintain the secure operation and stability of the electricity system, based on objective and non-discriminatory criteria.

ARTICLE 8.11

Independent body

1. Each Party shall maintain or establish a functionally independent body or bodies that:

(a) fix or approve the terms and conditions and tariffs for access to, and use of, the electricity network; and

(b) resolve disputes regarding appropriate terms and conditions and tariffs for access to, and use of, the electricity network within a reasonable period of time.

2. In performing their duties and exercising their powers set out in paragraph 1, the body or bodies shall act transparently and impartially with regard to users, owners and system operators of the electricity network.

ARTICLE 8.12

Cooperation on standards

1. With a view to preventing, identifying and eliminating unnecessary technical barriers to trade in energy goods and raw materials, Chapter 9 applies to those goods and materials.

2. In accordance with Articles 9.4 and 9.6, the Parties shall, as appropriate, promote cooperation between their relevant regulatory and standardising bodies in areas such as energy efficiency, sustainable energy and raw materials, with a view to contributing to trade, investment, and sustainable development, *inter alia*, through:

(a) the convergence or harmonisation, if possible, of their respective current standards, based on mutual interest and reciprocity, and in line with modalities to be agreed by the regulators and the standardising bodies concerned;

(b) joint analyses, methodologies and approaches, if possible, to assist and facilitate the development of relevant tests and measurement standards, in cooperation with their relevant standardising bodies;

(c) the development of common standards, if possible, on energy efficiency and renewable energy; and

(d) the promotion of standards on raw materials, renewable energy generation and energy efficiency equipment, including product design and labelling, if appropriate, through existing international cooperation initiatives.

3. For the purposes of implementing this Chapter, the Parties aim to encourage the development and use of open standards and interoperability of networks, systems, devices, applications or components in the energy and raw materials sectors.

ARTICLE 8.13

Research, development and innovation

The Parties recognise that research, development and innovation are key elements to further develop efficiency, sustainability and competitiveness in the energy and raw materials sectors. The Parties shall cooperate, as appropriate, *inter alia*, in:

(a) promoting the research, development, innovation and dissemination of environmentally sound and cost-effective technologies, processes and practices in the areas of energy and raw materials;

(b) promoting value addition, to the mutual benefit of the Parties, and enhancement of productive capacity in energy and raw materials; and

(c) strengthening capacity building in the context of research, development and innovation initiatives.

ARTICLE 8.14

Cooperation on energy and raw materials

1. The Parties shall cooperate, as appropriate, in the areas of energy and raw materials with a view to, *inter alia*:

(a) reducing or eliminating measures that in themselves or together with other measures could distort trade and investment, including measures of a technical, regulatory or economic nature affecting energy or raw materials sectors;

(b) discussing, whenever possible, their positions in international fora where relevant trade and investment issues are discussed, and fostering international programmes in the areas of energy efficiency, renewable energy and raw materials; and

(c) promoting responsible business conduct in accordance with international standards that have been endorsed or are supported by the Parties, such as the OECD Guidelines for Multinational Enterprises and, in particular, Chapter IX thereof on Science and Technology.

Thematic cooperation on energy

2. The Parties recognise the need to accelerate the deployment of renewable and low carbon energy sources, increase energy efficiency and promote innovation, and to ensure access to safe, sustainable and affordable energy. The Parties shall cooperate on any relevant issue of mutual interest, such as:

(a) renewable energy, in particular with regard to technologies, integration into and access to the electricity system, storage and flexibility, and the whole renewable hydrogen supply chain;

(b) energy efficiency, including regulation, best practices, and efficient and sustainable heating and cooling systems;

(c) electromobility and charging infrastructure deployment; and

(d) open and competitive energy markets.

Thematic cooperation on raw materials

3. The Parties recognise their shared commitment to responsible sourcing and sustainable production of raw materials, and their mutual interest in facilitating the integration of raw materials value chains. The Parties shall cooperate on any relevant issue of mutual interest, such as:

(a) responsible mining practices and sustainability of raw materials value chains, including the contribution of raw materials value chains to the fulfilment of the UN Sustainable Development Goals;

(b) raw materials value chains, including value addition; and

(c) identification of areas of mutual interest for cooperation on research, development and innovation activities covering the entire raw materials value chain, including cutting-edge technologies, smart mining and digital mines.

4. When developing cooperation activities, the Parties shall take into account available resources. Activities may be carried out in person or by any technological means available to the Parties.

5. Cooperation activities may be developed and implemented with the participation of international organisations, global fora and research institutions, as agreed between the Parties.

ARTICLE 8.15

Energy transition and renewable fuels

1. For the purpose of implementing this Chapter, the Parties recognise the important contribution of renewable fuels, *inter alia*, renewable hydrogen, including their derivatives, and renewable synthetic fuels, in reducing greenhouse gas emissions to address climate change.

2. In accordance with Article 8.12(2), the Parties shall, as appropriate, cooperate on convergence or harmonisation, if possible, of certification schemes for renewable fuels, such as schemes with regard to lifecycle emissions and safety standards.

3. Regarding renewable fuels, the Parties shall also cooperate with a view to:

(a) identifying, reducing and eliminating, as appropriate, measures that may distort bilateral trade, including measures of a technical, regulatory and economic nature;

(b) fostering initiatives that facilitate bilateral trade to promote the production of renewable hydrogen; and

(c) promoting the use of renewable fuels considering their contribution to the reduction of greenhouse gas emissions.

4. The Parties shall, as appropriate, encourage the development and implementation of international standards and regulatory cooperation with respect to renewable fuels, and cooperate in relevant international fora with a view to developing relevant certification schemes that avoid the emergence of unjustified barriers to trade.

## ARTICLE 8.16

### Exception for small and isolated electricity systems

1. For the purpose of implementing this Chapter, the Parties recognise that their laws and regulations may provide for special regimes for small and isolated electricity systems.

2. Pursuant to paragraph 1, a Party may maintain, adopt or enforce measures with regard to small and isolated electricity systems that derogate from Articles 8.6, 8.7, 8.9, 8.10 and 8.11, provided that such measures do not constitute disguised restrictions to trade or investment between the Parties.

## ARTICLE 8.17

### Sub-Committee on Trade in Goods

1. The Sub-Committee on Trade in Goods ("Sub-Committee"), established pursuant to Article 33.4(1), shall be responsible for the implementation of this Chapter and Annexes 8-A and 8-B. The functions set out in subparagraphs (a), (c), (d) and (e) of Article 2.18 apply to this Chapter, *mutatis mutandis*.

2. Consistent with Articles 8.12, 8.13, 8.14 and 8.15, the Sub-Committee may recommend that the Parties establish or facilitate other means of cooperation between them in the areas of energy and raw materials.

3. If mutually agreed by the Parties, the Sub-Committee shall meet in sessions dedicated to the implementation of this Chapter. When preparing such sessions, each Party may consider, as appropriate, inputs from relevant stakeholders or experts.

4. Each Party shall designate a contact point to facilitate the implementation of this Chapter, including by ensuring the appropriate involvement of representatives of a Party, notify the other Party of its contact details and promptly notify the other Party of any changes to those contact details. For Chile, the contact point shall be a representative of the Under-Secretariat of International Economic Relations of the Ministry of Foreign Affairs or its successor.

# CHAPTER 9

# TECHNICAL BARRIERS TO TRADE

## ARTICLE 9.1

### Objective

The objective of this Chapter is to enhance and facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade and by promoting greater regulatory cooperation.

## ARTICLE 9.2

### Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the TBT Agreement which may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies which are covered by Chapter 21; or

(b) sanitary and phytosanitary measures which are covered by Chapter 6.

ARTICLE 9.3

Incorporation of certain provisions of the TBT Agreement

Articles 2 to 9 and Annexes 1 and 3 of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 9.4

International standards

1. International standards developed by the organisations listed in Annex 9-A shall be considered to be the relevant international standards within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, provided that in their development those organisations have complied with the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement[1].

2. On request of a Party, the Trade Council may adopt a decision to amend Annex 9-A, pursuant to subparagraph (a) of Article 33.1(6).

[1] G/TBT/9, 13 November 2000, Annex 4.

ARTICLE 9.5

Technical regulations

1. The Parties recognise the importance of carrying out, in accordance with each Party's respective rules and procedures, a regulatory impact assessment of planned technical regulations.

2. Each Party shall assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.

3. Each Party shall use relevant international standards as a basis for its technical regulations except when the Party developing the technical regulation can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

4. If a Party does not use international standards as a basis for a technical regulation, it shall, on request of the other Party, identify any substantial deviation from the relevant international standard and explain the reasons why such standards have been judged an ineffective or inappropriate means for the fulfilment of the objective pursued, and provide the scientific or technical evidence on which that assessment is based.

5. Further to the obligation of each Party pursuant to Article 2.3 of the TBT Agreement, each Party shall review, in accordance with its respective rules and procedures, its technical regulations with a view to increasing the convergence of those technical regulations with relevant international standards. A Party shall, *inter alia*, take into account any new development in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist.

## ARTICLE 9.6

## Regulatory cooperation

1. The Parties recognise that a broad range of regulatory cooperation mechanisms exist that can help to eliminate or avoid the creation of technical barriers to trade.

2. A Party may propose to the other Party sector-specific regulatory cooperation activities in areas covered by this Chapter. Those proposals shall be transmitted to the contact point referred to in Article 9.13, and shall consist of:

(a) information exchanges on regulatory approaches and practices; or

(b) initiatives to further align technical regulations and conformity assessment procedures with relevant international standards.

The other Party shall reply to the proposal in a reasonable time.

3. The contact points referred to in Article 9.13 shall inform the Trade Committee about the cooperation activities carried out pursuant to this Article.

4. The Parties shall endeavour to exchange and collaborate on mechanisms to facilitate the acceptance of conformity assessment results in order to eliminate unnecessary technical barriers to trade.

5. The Parties shall encourage cooperation between their respective organisations responsible for technical regulation, standardisation, conformity assessment, accreditation and metrology, whether governmental or non-governmental, with a view to addressing issues covered by this Chapter.

6. Nothing in this Article shall be construed as requiring a Party to:

(a) deviate from its procedures for preparing and adopting regulatory measures;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve a particular regulatory outcome.

7. For the purposes of this Article and the provisions on cooperation under Annexes 9-A to 9-E, the European Commission shall act on behalf of the European Union.

ARTICLE 9.7

Cooperation on market surveillance, compliance and safety of non-food products

1. The Parties recognise the importance of cooperation on market surveillance, compliance and the safety of non-food products for the facilitation of trade and for the protection of consumers and other users, and the importance of building mutual trust based on shared information.

2. For the purposes of this Article:

(a) "consumer products" means goods intended for or likely to be used by consumers, with the exception of food, medical devices and medicinal products; and

(b) "market surveillance" means activities conducted and measures taken by public authorities, including activities conducted and measures taken in cooperation with economic operators, on the basis of procedures of a Party which enable that Party to monitor or address compliance of products with the requirements set out in its laws and regulations or their safety.

3. To guarantee independent and impartial functioning of market surveillance, each Party shall ensure:

(a) the separation of market surveillance functions from conformity assessment functions; and

(b) the absence of any interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.

4. The Parties may cooperate and exchange information in the area of non-food product safety and compliance, in particular with respect to the following:

(a) market surveillance and enforcement activities and measures;

(b) risk assessment methods and product testing;

(c) coordinated product recalls or other similar actions;

(d) scientific, technical and regulatory matters, aiming to improve non-food product safety and compliance;

(e) emerging issues of significant health and safety relevance;

(f) standardisation-related activities; and

(g) exchange of officials.

5. The European Union may provide Chile with selected information from its Rapid Alert System with respect to consumer products as referred to in Directive 2001/95/EC of the European Parliament and of the Council[1] or its successor, and Chile may provide the European Union with selected information on the safety of consumer products and on preventive, restrictive and corrective measures taken with respect to consumer products. The information exchange may take the form of:

(a) non-systematic exchange, in duly justified specific cases, excluding personal data; and

[1] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ EC L 11, 15.1.2002, p. 4).

(b) systematic exchange based on an arrangement established by decision of the Trade Council to be set out in Annex 9-D.

6. The Trade Council may adopt a decision to establish an arrangement on the regular exchange of information, including by electronic means, on measures taken with respect to non-compliant non-food products, other than those covered by paragraph 5 of this Article, to be set out in Annex 9-E.

7. Each Party shall use the information obtained pursuant to paragraphs 4, 5 and 6 for the sole purpose of the protection of consumers, health, safety or the environment.

8. Each Party shall treat the information obtained pursuant to paragraphs 4, 5 and 6 as confidential.

9. The arrangements referred to in subparagraph (b) of paragraph 5 and in paragraph 6 shall specify the product scope, the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

10. Pursuant to subparagraph (a) of Article 33.1(6), the Trade Council shall have the power to adopt decisions in order to determine or amend the arrangements set out in Annexes 9-D and 9-E.

ARTICLE 9.8

Standards

1. With a view to harmonising standards on as wide a basis as possible, each Party shall encourage the standardising bodies established within its territory, as well as the regional standardising bodies of which a Party or the standardising bodies established within its territory are members, to:

(a) participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;

(b) use relevant international standards as a basis for the standards they develop, except if such international standards would be ineffective or inappropriate, for example because of an insufficient level of protection, fundamental climatic or geographical factors, or fundamental technological problems;

(c) avoid duplication of, or overlap with, the work of international standardising bodies;

(d) review, at regular intervals, national and regional standards which are not based on relevant international standards, with a view to increasing their convergence with relevant international standards;

(e) cooperate with the relevant standardising bodies of the other Party in international standardisation activities, including in the international standardising bodies or at regional level; and

(f) foster bilateral cooperation between themselves and with the standardising bodies of the other Party.

2. The Parties should exchange information on:

(a) their use of standards in support of technical regulations; and

(b) their standardisation processes and the extent of the use of international, regional or subregional standards as a basis for their national standards.

3. If standards are made mandatory through incorporation or referencing in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 9.10 of this Agreement and in Articles 2 or 5 of the TBT Agreement shall apply.

ARTICLE 9.9

Conformity assessment

1. The provisions of Article 9.5 with respect to the preparation, adoption and application of technical regulations shall also apply, *mutatis mutandis*, to conformity assessment procedures.

2. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

(a) select conformity assessment procedures that are proportionate to the risks involved;

(b) consider, subject to its laws and regulations, the use of a supplier's declaration of conformity as being one of the possible ways of showing compliance with a technical regulation; and

(c) if requested by the other Party, provide information on the criteria used to select the conformity assessment procedures for specific products.

3. If a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation, and has not reserved that task to a governmental authority as specified in paragraph 4, it shall:

(a) preferentially use accreditation to qualify conformity assessment bodies;

(b) preferentially use international standards for accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies, for example through the mechanisms of the International Laboratory Accreditation Cooperation (hereinafter referred to as "ILAC") and the International Accreditation Forum (hereinafter referred to as "IAF");

(c) join or, as applicable, encourage its conformity assessment bodies to join any functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

(d) ensure that, if more than one conformity assessment body has been designated for a particular product or set of products, economic operators can choose which conformity assessment body will carry out the conformity assessment procedure;

(e) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;

(f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party; nothing in this subparagraph shall be construed as prohibiting a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself; and

(g) publish on official websites a list of the bodies that it has designated to perform such conformity assessments and the relevant information on the scope of designation of every such body.

4. Nothing in this Article shall preclude a Party from requesting that conformity assessment in relation to specific products is performed by its designated governmental authorities. In such cases, the Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, upon request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited in amount to the approximate cost of the services rendered; and

(b) make the conformity assessment fees publicly available or provide them upon request.

5. Notwithstanding paragraphs 2, 3 and 4 of this Article, in the cases in which the European Union accepts a supplier's declaration of conformity in the fields listed in Annex 9-B, Chile shall provide for, in accordance with its laws and regulations, an efficient and transparent procedure for the acceptance of certificates and test reports issued by conformity assessment bodies that are located in the territory of the European Union and that have been accredited by an accreditation body that is a member of the international arrangements for mutual recognition of the ILAC and the IAF as an assurance that a product conforms with the requirements of Chile's technical regulations.

6. For the purposes of this Article, "supplier's declaration of conformity" means a first-party attestation issued by the manufacturer under the sole responsibility of that manufacturer based on the results of an appropriate type of conformity assessment activity and excluding mandatory third party assessment, as an assurance that a product conforms to a technical regulation that sets out such conformity assessment procedures.

7. On request of either Party, the Sub-Committee referred to in Article 9.14 shall review the list of fields in paragraph 1 of Annex 9-B. The Sub-Committee may recommend that the Trade Council amend Annex 9-B, pursuant to subparagraph (a) of Article 33.1(6).

ARTICLE 9.10

Transparency

1. In accordance with its respective rules and procedures and without prejudice to Chapter 29, when developing major technical regulations which may have a significant effect on trade in goods, each Party shall ensure the existence of transparency procedures that allow persons of the Parties to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security or a threat thereof arise.

2. Each Party shall allow persons of the other Party to participate in the consultation process referred to in paragraph 1 on terms no less favourable than those accorded to its own persons, and make the results of that consultation process public.

3. Each Party shall allow a period of at least 60 days following its notification to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security or a threat thereof arise. A Party shall consider any reasonable request from the other Party to extend that comment period.

4. In the event that the notified text is not in one of the official WTO languages, the notifying Party shall provide a detailed and comprehensive description of the content of the proposed technical regulations and conformity assessment procedures in the WTO notification format.

5. If a Party receives written comments as referred to in paragraph 3, it shall:

(a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority at a time when they can be taken into account; and

(b) reply in writing to the comments no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.

6. Each Party shall endeavour to publish on a website its responses to the written comments referred to in paragraph 3 that it receives from the other Party no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.

7. A Party shall, if requested by the other Party, provide information regarding the objectives of, and the legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

8. Each Party shall ensure that the technical regulations and conformity assessment procedures it has adopted are accessible through official websites or online official journals, free of charge.

9. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO Central Registry of Notifications.

10. Each Party shall allow a reasonable interval between the publication of the technical regulations and their entry into force, subject to the conditions specified in Article 2.12 of the TBT Agreement. For the purposes of this Article, "reasonable interval" means a period of not less than six months, except when such period would be ineffective for the fulfilment of the legitimate objectives pursued.

11. A Party shall consider any reasonable request from the other Party, received prior to the end of the comment period referred to in paragraph 3, to extend the period between the publication of the technical regulation and its entry into force, except when the delay would be ineffective for the fulfilment of the legitimate objectives pursued.

## ARTICLE 9.11

## Marking and labelling

1. The Parties affirm that their technical regulations that include or address exclusively marking or labelling shall observe the principles of Article 2.2 of the TBT Agreement.

2. Unless it is necessary for the fulfilment of the legitimate objectives referred to in Article 2.2 of the TBT Agreement, a Party that requires mandatory marking or labelling of products shall:

(a) only require information which is relevant for consumers or users of the product or information that indicates the product's conformity with the mandatory technical requirements;

(b) not require any prior approval, registration or certification of the markings or labels of products, or any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements;

(c) if it requires the use of a unique identification number by economic operators, issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(d) provided it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, permit the following:

(i) information in other languages in addition to the language required in the importing Party of the goods;

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the importing Party of the goods;

(e) accept that labelling, including supplementary labelling or corrections to labelling, takes place in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless such labelling is required to be carried out by approved persons for reasons of public health or safety; and

(f) endeavour to accept non-permanent or detachable labels, or the inclusion of relevant information in the accompanying documentation, rather than labels physically attached to the product.

ARTICLE 9.12

Technical discussions and consultations

1. A Party may request the other Party to provide information on any matter covered by this Chapter. The other Party shall provide that information within a reasonable period of time.

2. If a Party considers that any draft or proposed technical regulation or conformity assessment procedure of the other Party might have a significant adverse effect on trade between the Parties, it may request technical discussions regarding its concerns with regard to the measure. The request shall be made in writing and identify:

(a) the measure;

(b) the provisions of this Chapter to which the requesting Party's concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns with regard to the measure.

3. The Party shall deliver a request pursuant to this Article to the contact point of the other Party designated pursuant to Article 9.13.

4. On request of a Party, the Parties shall meet to discuss the concerns raised in the request referred to in paragraph 2, in person or via video or teleconference, within 60 days of the date of the request. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter as expeditiously as possible.

5. If the requesting Party considers the matter to be urgent, it may request the other Party to meet within a shorter timeframe. The other Party shall consider that request.

6. For greater certainty, this Article is without prejudice to either Party's rights and obligations under Chapter 31.

ARTICLE 9.13

Contact points

1. Each Party shall designate a contact point to facilitate cooperation and coordination under this Chapter and notify the other Party of its contact details. A Party shall promptly notify the other Party of any changes to those contact details.

2. The contact points shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties on all matters concerning technical barriers to trade. The contact points shall:

(a) organise the technical discussions and consultations referred to in Article 9.12;

(b) promptly address any issue that a Party raises related to the development, adoption, application or enforcement of standards, technical regulations or conformity assessment procedures;

(c) on request of a Party, arrange discussions on any matter arising under this Chapter; and

(d) exchange information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures.

3. The contact points shall communicate with one another by any agreed method that is appropriate to carry out their functions.

ARTICLE 9.14

Sub-Committee on Technical Barriers to Trade

The Sub-Committee on Technical Barriers to Trade ("Sub-Committee") established pursuant to Article 33.4(1) shall:

(a) monitor the implementation and administration of this Chapter;

(b) enhance cooperation as regards the development and improvement of standards, technical regulations and conformity assessment procedures;

(c) establish priority areas of mutual interest for future work under this Chapter and consider proposals for new initiatives;

(d) monitor and discuss developments under the TBT Agreement; and

(e) take any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement.

CHAPTER 10

# INVESTMENT LIBERALISATION

## ARTICLE 10.1

### Scope

1. This Chapter applies to measures, adopted or maintained by a Party in its territory, affecting the establishment of an enterprise or the operation of a covered enterprise in all economic activities by an investor of the other Party.

2. This Chapter does not apply to:

(a) audio-visual services;

(b) national maritime cabotage[1]; or

[1] Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Chile or a Member State and another port or point located in Chile or that same Member State, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in Chile or a Member State.

(c) domestic and international air services or related services in support of air services[1], whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) ground handling services.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to financial institutions of the other Party, to investors of the other Party or to the investments of such investors in financial institutions in the territory of that Party, as defined in Article 18.2.

4. Articles 10.5, 10.6, 10.8, 10.9 and 10.10 do not apply with respect to public procurement.

[1] For greater certainty, air services or related services in support of air services include the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

5. Articles 10.5, 10.6, 10.8 and 10.10 do not apply with respect to subsidies granted by a Party, including government-supported loans, guarantees and insurances.

## ARTICLE 10.2

## Definitions

1. For the purposes of this Chapter and Annexes 10-A, 10-B and 10-C:

(a) "activities performed in the exercise of governmental authority" means activities performed, including services supplied, neither on a commercial basis nor in competition with one or more economic operators;

(b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

(c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) "covered enterprise" means an enterprise which is established in accordance with subparagraph (h) by an investor of a Party in the territory of the other Party, in accordance with the applicable law, and which is in existence as at the date of entry into force of this Agreement or is established thereafter;

(e) "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party to a service consumer of the other Party;

(f) "economic activities" means activities of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;

(g) "enterprise" means a juridical person, branch or representative office set up through establishment;

(h) "establishment" means the setting up, including the acquisition[1] of, an enterprise by an investor of a Party in the territory of the other Party;

[1] The term "acquisition" is understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

(i) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except for the preparation of food; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; and flight operation, crew administration and flight planning; ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

(j) "investor of a Party" means a natural or juridical person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with subparagraph (h);

(k) "juridical person of a Party" means[1]:

(i) for the European Union:

(A) a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations[2] in the territory of the European Union; and

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[1] For greater certainty, the shipping companies referred to in this definition are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

[2] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(B) shipping companies established outside the European Union, and controlled by natural persons of a Member State, whose vessels are registered in, and fly the flag of, a Member State;

(ii) for Chile:

(A) a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile; and

(B) shipping companies established outside Chile, and controlled by natural persons of Chile, whose vessels are registered in, and fly the flag of, Chile;

(l) "operation" means the conduct, management, maintenance, use, enjoyment, sale or other form of disposal of an enterprise by an investor of a Party, in the territory of the other Party;

(m) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution; these activities do not include the pricing of air transport services nor the applicable conditions; and

(n) "service" means any service in any sector except for services supplied in the exercise of governmental authority.

ARTICLE 10.3

Right to regulate

The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

ARTICLE 10.4

Relation to other chapters

1. In the event of inconsistency between this Chapter and Chapter 18, the latter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of the other Party posts a bond or other form of financial security as a condition for the cross-border supply of a service in its territory does not in itself make this Chapter applicable to such cross-border supply of that service. This Chapter applies to measures adopted or maintained by the Party relating to the bond or financial security, if such bond or financial security constitutes a covered enterprise.

ARTICLE 10.5

Market access

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by covered enterprises, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

(a) limits the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;

(b) limits the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limits the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[1];

(d) restricts or requires specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity; or

[1] Subparagraphs (a), (b) and (c) do not cover measures taken in order to limit the production of an agricultural or fishery product.

(e) limits the total number of natural persons who may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 10.6

National treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to its own investors and to their enterprises.

2. Each Party shall accord to investors of the other Party and to covered enterprises, with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[2], to its own investors and to their enterprises.

3. The treatment accorded by a Party under paragraphs 1 and 2 means:

(a) with respect to a regional or local government of Chile, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to investors of Chile and to their enterprises in its territory;

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1 For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

2 For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

(b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Member State and to their enterprises in its territory[1].

ARTICLE 10.7

Public procurement

1. Each Party shall ensure that enterprises constituting a covered enterprise are accorded treatment no less favourable than that accorded, in like situations, to its own enterprises with respect to any measure regarding the purchase of goods or services by a procuring entity for governmental purposes.

2. The application of the national treatment obligation provided for in this Article is subject to security and general exceptions as set out in Article 21.3.

ARTICLE 10.8

Most-favoured-nation treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[2], to investors of a third country and to their enterprises.

[1] For greater certainty, the treatment accorded by a government of, or in, a Member State includes the regional and local level of government, when applicable.

[2] For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

2. Each Party shall accord to investors of the other Party and to covered enterprises with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[1], to investors of a third country and to their enterprises.

3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to investors of the other Party or to covered enterprises the benefit of any treatment resulting from measures providing for the recognition of standards, including of the standards or criteria for the authorisation, licensing or certification of a natural person or an enterprise for carrying out an economic activity, or of prudential measures.

4. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not include investment dispute resolution procedures or mechanisms provided for in other international investment treaties or trade agreements. The substantive provisions in other international investment treaties or trade agreements do not in themselves constitute "treatment" as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party. Measures of a Party applied pursuant to such substantive provisions may constitute "treatment" under this Article and thus give rise to a breach of this Article.

[1] For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

ARTICLE 10.9

Performance requirements

1. A Party shall not, in connection with the establishment or operation of an enterprise of a Party or of a third country in its territory, impose or enforce any requirement, or enforce any commitment or undertaking, to:

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

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

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

(d) 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 enterprise;

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

(f) transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;

(g) supply exclusively from the territory of that Party the goods it produces or the services it supplies to a specific regional or world market;

(h) locate the headquarters of that investor for a specific region of the world, which is broader than the territory of the Party, or the world market in its territory;

(i) hire a given number or percentage of its nationals;

(j) restrict the exportation or sale for export; or

(k) with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or to any future licence contract[1] freely entered into between the investor and a natural or juridical person or any other entity in its territory, provided that the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party, adopt:

(i) a given rate or amount of royalty below a certain level under a licence contract; or

(ii) a given duration of the term of a licence contract.

2. For greater certainty, subparagraph (k) of paragraph 1 does not apply when the licence contract is concluded between the investor and a Party.

[1] A licence contract referred to in this subparagraph means a contract concerning the licensing of technology, production process, or other proprietary knowledge.

3. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, of a Party or of a third country, 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 or services provided in its territory, or to purchase goods or services from natural persons or enterprises 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 enterprise;

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

(e) to restrict the exportation or sale for export.

4. Paragraph 3 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory by an investor of a Party or a third country, 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. Subparagraphs (f) and (k) of paragraph 1 do not apply if:

(a) a Party authorises the use of an intellectual property right in accordance with Article 31 or 31*bis* of the TRIPS Agreement or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

(b) the requirement is imposed or enforced or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority in order to remedy a practice determined after judicial or administrative process as being a violation of the Party's competition law.

6. Subparagraphs (a), (b) and (c) of paragraph 1 and subparagraphs (a) and (b) of paragraph 3 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

7. Subparagraphs (a) and (b) of paragraph 3 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.

8. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annexes 10-A, 10-B and 10-C.

9. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

ARTICLE 10.10

Senior management and boards of directors

A Party shall not require that a covered enterprise appoints natural persons of a particular nationality as members of boards of directors, or to a senior management position, such as executives or managers.

ARTICLE 10.11

Non-conforming measures

1. Articles 10.6, 10.8, 10.9 and 10.10 do not apply to:

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

(i) for the European Union:

(A) the European Union, as set out in Appendix 10-A-1;

(B) the central government of a Member State, as set out in Appendix 10-A-1;

(C) a regional level of government of a Member State, as set out in Appendix 10-A-1; or

(D) a local level of government; and

(ii) for Chile:

(A) the central government, as set out in Appendix 10-A-2;

(B) a regional level of government, as set out in Appendix 10-A-2; or

(C) a local level of government;

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

(c) a modification to any non-conforming measure referred to in subparagraph (a) of this paragraph, to the extent that the modification does not decrease the conformity of the measure, as it existed immediately before the modification, with Article 10.6, 10.8, 10.9 or 10.10.

2. Articles 10.6, 10.8, 10.9 and 10.10 do not apply to measures of a Party with respect to sectors, sub-sectors or activities as set out in its schedule in Annex 10-B.

3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by its reservations set out in Annex 10-B, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of a covered enterprise existing at the time the measure becomes effective.

4. Article 10.5 does not apply to any measure of a Party which is consistent with the commitments set out in Annex 10-C.

5. Articles 10.6 and 10.8 do not apply to any measure of a Party that constitutes an exception to, or derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided for in Articles 3, 4 and 5 of that Agreement.

6. For greater certainty, Articles 10.6 and 10.8 shall not be construed as preventing a Party from prescribing information requirements, including for statistical purposes, in connection with the establishment or operation of investors of the other Party or of a covered enterprise, provided that it does not constitute a means to circumvent that Party's obligations under those Articles.

ARTICLE 10.12

Denial of benefits

A Party may deny to an investor of the other Party or a covered enterprise the benefits of this Chapter if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

(a) prohibit transactions with that investor or covered enterprise; or

(b) would be violated or circumvented if the benefits of this Chapter were accorded to that investor or covered enterprise, including if the measures prohibit transactions with a person who owns or controls either of them.

ARTICLE 10.13

Sub-Committee on Services and Investment

The Sub-Committee on Services and Investment ("Sub-Committee") is established pursuant to Article 33.4(1). When addressing matters related to investment, the Sub-Committee shall monitor and ensure proper implementation of this Chapter and of Annexes 10-A, 10-B and 10-C.

# CHAPTER 11

# CROSS-BORDER TRADE IN SERVICES

## ARTICLE 11.1

### Scope

1. This Chapter applies to measures of a Party affecting cross-border trade in services supplied by service suppliers of the other Party. Such measures include measures that affect:

(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, in connection with the supply of a service, services which are required by a Party to be offered to the public generally, including distribution, transport and telecommunications networks; and

(d) the provision of a bond or other form of financial security, as a condition for the supply of a service.

2. This Chapter does not apply to:

(a) financial services, as defined in Article 18.2;

(b) audio-visual services;

(c) national maritime cabotage[1];

(d) domestic and international air services or related services in support of air services[2], whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) ground handling services;

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1 Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Chile or a Member State and another port or point located in Chile or that same Member State, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in Chile or a Member State.

2 For greater certainty, air services or related services in support of air services include the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

(e) public procurement; and

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

ARTICLE 11.2

Definitions

For the purposes of this Chapter and Annexes 10-A, 10-B and 10-C:

(a) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

(b) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(c) "cross-border trade in services" or "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party to a service consumer of the other Party;

(d) "enterprise" means a juridical person, branch or representative office set up through establishment;

(e) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except for the preparation of food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operation, crew administration and flight planning; ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

(f) "juridical person of a Party" means[1]:

(i) for the European Union:

(A) a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations[2] in the territory of the European Union; and

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[1] For greater certainty, the shipping companies referred to in this definition are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

[2] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations".

(B) shipping companies established outside the European Union, and controlled by natural persons of a Member State, whose vessels are registered in, and fly the flag of, a Member State;

(ii) for Chile:

(A) a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile; and

(B) shipping companies established outside Chile, and controlled by natural persons of Chile, whose vessels are registered in, and fly the flag of, Chile;

(g) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services, including all aspects of marketing such as market research, advertising and distribution; these activities do not include the pricing of air transport services or the applicable conditions;

(h) "service" means any service in any sector except services supplied in the exercise of governmental authority;

(i) "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers; and

(j) "service supplier of a Party" means any natural or juridical person of a Party that seeks to supply or supplies a service.

ARTICLE 11.3

Right to regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

ARTICLE 11.4

National treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords, in like situations, to its own services and service suppliers.

2. The treatment accorded by a Party under paragraph 1 means:

(a) with respect to a regional or local government of Chile, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to its own services and service suppliers;

(b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own services and service suppliers.

3. A Party may meet the requirement set out in 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 services and service suppliers.

4. 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 a Party when compared to service suppliers of the other Party.

5. Nothing in this Article shall be construed as requiring a Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

## ARTICLE 11. 5

### Most-favoured-nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords, in like situations, to services and service suppliers of a third country.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from measures providing for the recognition of standards, including of the standards or criteria for the authorisation, licensing or certification of a natural person or an enterprise for carrying out an economic activity, or of prudential measures.

3. For greater certainty, the treatment referred to in paragraph 1 does not include dispute resolution procedures or mechanisms provided for in other international treaties or trade agreements. The substantive provisions in other international treaties or trade agreements do not in themselves constitute "treatment" as referred to in paragraph 1 and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party. Measures of a Party applied pursuant to such substantive provisions may constitute "treatment" under this Article and thus give rise to a breach of this Article.

## ARTICLE 11.6

## Local presence

A Party shall not require a service supplier of the other Party to establish or maintain an enterprise or to be resident in its territory as a condition for the cross-border supply of a service.

ARTICLE 11.7

Market access

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial subdivision, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of service operations or the total quantity of services output, expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[1]; or

(iv) 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 the requirement of an economic needs test; or

[1] This subparagraph does not cover the measures of a Party that limit inputs for the supply of services.

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 11.8

Non-conforming measures

1. Articles 11.4, 11.5 and 11.6 do not apply to:

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

(i) for the European Union:

(A) the European Union, as set out in Appendix 10-A-1;

(B) the central government of a Member State, as set out in Appendix 10-A-1;

(C) a regional level of government of a Member State, as set out in Appendix 10-A-1; or

(D) a local level of government; and

(ii) for Chile:

(A) the central government, as set out in Appendix 10-A-2;

(B) a regional level of government, as set out in Appendix 10-A-2; or

(C) a local level of government;

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

(c) a modification to any non-conforming measure referred to in subparagraph (a) of this paragraph, to the extent that the modification does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.4, 11.5 and 11.6.

2. Articles 11.4, 11.5 and 11.6 do not apply to any measure of a Party with respect to sectors, sub-sectors or activities as set out in its schedule in Annex 10-B.

3. Article 11.7 does not apply to any measure of a Party with respect to committed sectors, subsectors or activities, as set out in Annex 10-C.

ARTICLE 11.9

Denial of benefits

A Party may deny a service supplier of the other Party the benefits of this Chapter if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

(a) prohibit transactions with that service supplier, or with a person who owns or controls that service supplier; or

(b) would be violated or circumvented if the benefits of this Chapter were accorded to that service supplier.

ARTICLE 11.10

Sub-Committee on Services and Investment

The Sub-Committee on Services and Investment ("Sub-Committee") is established pursuant to Article 33.4(1). When addressing matters related to services, the Sub-Committee shall monitor and ensure proper implementation of this Chapter, Chapters 12, 13, 14, 15, 16, 17 and 19 and Annexes 10-A, 10-B, 10-C, 12-A, 12-B, 12-C, 14-A and 14-B.

# CHAPTER 12

# TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

## ARTICLE 12.1

### Scope

1. This Chapter applies to measures of a Party concerning the performance of economic activities through the entry and temporary stay in its territory of natural persons of the other Party who are business visitors for establishment purposes, investors, intra-corporate transferees, short-term business visitors, contractual services suppliers and independent professionals.

2. This Chapter does not apply to the sectors referred to in subparagraphs (b), (c) and (d) of Article 11.1(2).

3. This Chapter does not apply to measures of a Party affecting natural persons of the other Party seeking access to its employment market, or to measures regarding citizenship, nationality, residence or employment on a permanent basis.

4. Nothing in this Agreement shall prevent a Party from applying measures regulating the entry of natural persons of the other Party into, or their temporary stay in, its territory, including measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its border, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Agreement.

5. The sole fact that a Party requires persons of the other Party to obtain a visa shall not be construed as nullifying or impairing the benefits accruing to the other Party under this Agreement.

6. To the extent that commitments are not undertaken under this Chapter, all requirements provided for in the law of a Party regarding the entry and temporary stay of natural persons shall continue to apply, including laws and regulations concerning the period of stay.

7. Notwithstanding this Chapter, all requirements provided for in the law of a Party regarding work and social security measures, including laws and regulations concerning minimum wages and collective wage agreements, shall continue to apply.

8. Commitments under this Chapter on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

ARTICLE 12.2

Definitions

1. The definitions in Articles 10.2 and 11.2 apply to this Chapter and to Annexes 12-A, 12-B and 12-C, with the exception of the definition of investor of a Party in subparagraph (j) of Article 10.2(1).

2. For the purposes of this Chapter and Annexes 12-A, 12-B and 12-C:

(a) "business sellers" means short-term business visitors who:

(i) are representatives of a service or goods supplier of a Party for the purposes of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier, including: attending meetings or conferences; engaging in consultations with business colleagues; and taking orders or negotiating contracts with an enterprise located in the territory of the other Party;

(ii) are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in the territory of the Party where the short-term business visitors are staying temporarily, and a consumer in that territory; and

(iii) are not commission agents;

(b) "business visitors for establishment purposes" means natural persons working in a senior position within a juridical person of a Party who are responsible for establishing an enterprise of such juridical person in the territory of the other Party, who do not offer or provide services or engage in any economic activity other than that required for establishment purposes, and who do not receive remuneration from a source located within the other Party;

(c) "contractual services suppliers" means natural persons employed by a juridical person of a Party which is not itself established in the territory of the other Party and is not an agency for placement and supply services of personnel, or acting through such an agency, and which has concluded a *bona fide* contract with a final consumer in the other Party to supply services in the other Party requiring the presence on a temporary basis of its employees in that other Party in order to fulfil the contract to supply services[1];

(d) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party, but not in the territory of the other Party, who have concluded a *bona fide* contract, other than through an agency for placement and supply services of personnel, with a final consumer to supply services in the other Party requiring their presence on a temporary basis in that other Party[2];

(e) "installers and maintainers" means short-term business visitors possessing specialised knowledge essential to a seller's or lessor's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer and related services, purchased or leased from an enterprise located outside the territory of the Party into which entry and temporary stay is sought, throughout the duration of the warranty or service contract;

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1 The contract to supply services referred to in this subparagraph shall comply with the requirements of the law of the Party where the contract is executed.

2 The contract to supply services referred to in this subparagraph shall comply with the requirements of the law of the Party where the contract is executed.

(f) "intra-corporate transferees" means natural persons who have been employed by, or partners in, a juridical person of a Party for at least one year, who are temporarily transferred to an enterprise of that juridical person in the territory of the other Party, and who belong to one of the following categories:

(i) managers;

(ii) specialists;

(iii) trainee employees;

(g) "investor" means a natural person who establishes in the territory of the other Party an enterprise to which that natural person or the juridical person employing that natural person has committed, or is in the process of committing, a substantial amount of capital, and who develops or administers the operation of that enterprise in a capacity that is supervisory or executive;

(h) "managers" means natural persons working in a senior position within a juridical person of a Party who primarily direct the management of the enterprise in the territory of the other Party[1], receiving general supervision or direction principally from higher level executives, the board of directors or from stockholders of the business or their equivalent and whose responsibilities include:

(i) directing the enterprise or a department or subdivision thereof;

[1] For greater certainty, this definition does not exclude managers who, while not directly performing tasks concerning the actual supply of the services, perform tasks, in the course of executing their duties as described in this definition, that are necessary for the provision of the services.

(ii) supervising and controlling the work of other supervisory, professional or managerial employees; and

(iii) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions;

(i) "short-term business visitors" means natural persons who are seeking entry and temporary stay in the territory of the other Party who do not engage in making direct sales to the general public, do not receive remuneration from a source located within the other Party, and belong to one of the following categories:

(i) business sellers;

(ii) installers and maintainers;

(j) "specialists" means natural persons working within a juridical person of a Party who possess specialised knowledge essential to the areas of activity, techniques or management of the enterprise; in assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification, including adequate professional experience, regarding a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; and

(k) "trainee employees" means natural persons who possess a university degree and are temporarily transferred for career development purposes or to obtain training in business techniques or methods[1].

ARTICLE 12.3

Intra-corporate transferees, business visitors for establishment purposes and investors

1. Subject to the relevant conditions and qualifications set out in Annex 12-A, each Party:

(a) shall allow the entry and temporary stay of intra-corporate transferees, business visitors for establishment purposes and investors of the other Party;

(b) shall allow the employment in its territory of intra-corporate transferees of the other Party;

(c) shall not maintain or adopt limitations in the form of numerical quotas or the requirement of an economic needs tests on the total number of natural persons who, in a specific sector, are allowed entry as business visitors for establishment purposes or investors, or who may be employed as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory; and

[1] The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.

(d) shall accord to intra-corporate transferees, business visitors for establishment purposes and investors of the other Party, with regard to their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The permissible length of stay shall be:

(a) for Chile, a period of up to two years which may be extended, without a requirement to apply for permanent residence, provided that the conditions on which the stay is based remain in effect; and

(b) for the European Union, a period of up to three years for managers and specialists, up to one year for trainee employees and investors, and up to 90 days within any six-month period for business visitors for establishment purposes.

ARTICLE 12.4

Short-term business visitors

1. Subject to the scope exclusions set out in Article 10.1(2) and subject to the relevant conditions and qualifications set out in Annex 12-A, a Party shall allow entry and temporary stay of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.

2. If short-term business visitors of a Party are engaged in the supply of a service to a consumer in the territory of the Party where they are staying temporarily, that Party shall accord to them, with regard to the supply of that service, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

3. The permissible length of stay shall be a period of up to 90 days in any 12-month period.

## ARTICLE 12.5

### Contractual services suppliers and independent professionals

1. Each Party shall allow the entry and temporary stay of contractual services suppliers of the other Party in its territory, in the sectors, subsectors and activities set out in Annex 12-B, subject to the relevant conditions and qualifications specified therein, and provided that:

(a) the natural persons are engaged in the supply of a service as employees of a juridical person which has obtained a service contract not exceeding 12 months;

(b) the natural persons entering the other Party have been engaged as employees of the juridical person referred to in subparagraph (a) for at least one year immediately preceding the date of submission of an application for entry into the other Party and possess, on the date of application for entry, at least three years of professional experience, obtained after having reached the age of majority, in the sector of activity which is the subject of the contract;

(c) the natural persons entering the other Party shall possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level[1]; and

(ii) professional qualifications, if required to exercise an activity pursuant to the laws and regulations of the Party where the service is supplied;

(d) the natural person does not receive remuneration for the provision of services in the territory of the other Party, other than the remuneration paid by the juridical person employing the natural person; and

(e) access accorded pursuant to this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to use the professional title of the Party where the service is provided.

2. Each Party shall allow the entry and temporary stay of independent professionals of the other Party in its territory in the sectors, subsectors and activities set out in Annex 12-B, subject to the relevant conditions and qualifications specified therein, and provided that:

(a) the contract concluded does not exceed a period of 12 months;

[1] If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether it is equivalent to a university degree required in its territory.

(b) the natural persons possess, on the date of application for entry and temporary stay, at least six years of professional experience in the sector of activity which is the subject of the contract.

(c) the natural persons entering into the territory of the other Party possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level[1]; and

(ii) professional qualifications, if such are required to exercise an activity pursuant to the laws and regulations of the Party where the service is supplied;

(d) access accorded pursuant to this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to use the professional title of the Party where the service is provided.

3. A Party shall not adopt or maintain limitations on the total number of contractual services suppliers or independent professionals of the other Party who are allowed entry and temporary stay in the form of numerical quotas or the requirement of an economic needs test.

4. A Party shall accord to contractual services suppliers and independent professionals of the other Party, with regard to the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

[1] If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether it is equivalent to a university degree required in its territory.

5. The permissible length of stay shall be:

(a) for the European Union, a cumulative period of not more than six months in any 12-month period or for the duration of the contract, whichever is less; and

(b) for Chile, a period up to one year which may be extended for subsequent periods, provided that the conditions on which the stay is based remain in effect.

ARTICLE 12.6

Non-conforming measures

To the extent that the relevant measure affects the entry or temporary stay of natural persons for business purposes, subparagraphs (c) and (d) of Article 12.3(1) and Article 12.5(3) and (4) do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the European Union:

(A) the European Union, as set out in Appendix 10-A-1;

(B) the central government of a Member State, as set out in Appendix 10-A-1;

(C) a regional government of a Member State, as set out in Appendix 10-A-1; or

(D) a local government, other than that referred to in subparagraph (C); and

(ii) for Chile:

(A) the central government, as set out in Appendix 10-A-2;

(B) a regional government, as set out in Appendix 10-A-2; or

(C) a local government;

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

(c) a modification of any non-conforming measure referred to in subparagraphs (a) and (b) of this Article to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with subparagraphs (c) and (d) of Article 12.3(1) and Article 12.5(3) and (4); or

(d) any measure of a Party consistent with a condition or qualification specified in Annex 10-B.

ARTICLE 12.7

Transparency

1. A Party shall make publicly available information relating to the entry and temporary stay of natural persons of the other Party referred to in Article 12.1(1).

2. The information referred to in paragraph 1 of this Article shall include, if applicable, the following information:

(a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;

(b) documentation required and conditions to be met;

(c) method of filing an application and options on where to file it, such as consular offices or online;

(d) application fees and an indicative timeframe of the processing of an application;

(e) the maximum length of stay under each type of authorisation referred to in subparagraph (a) of this paragraph;

(f) conditions for any available extension or renewal;

(g) rules regarding accompanying dependents;

(h) available review or appeal procedures; and

(i) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

3. With respect to the information referred to in paragraphs 1 and 2 of this Article, a Party shall endeavour to promptly inform the other Party of the introduction of any new requirements or procedures, or of any changes in requirements or procedures, which affect the effective application for the grant of entry into, temporary stay in and, if applicable, permission to work in the former Party.

## ARTICLE 12.8

## Non-application of dispute settlement

Chapter 31 does not apply to a refusal to grant entry and temporary stay unless the matter involves a pattern of practice.

CHAPTER 13

# DOMESTIC REGULATION

## ARTICLE 13.1

### Scope and definitions

1. This Chapter applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards[1] that affect:

(a) cross-border supply of services;

(b) the supply of a service or pursuit of any other economic activity through the establishment of an enterprise or operation of a covered enterprise; or

(c) the supply of a service through the temporary stay of certain categories of natural persons of a Party in the territory of the other Party, as set out in Article 12.1.

2. This Chapter only applies to sectors for which a Party has undertaken specific commitments under Chapters 10, 11 and 12 and to the extent that those specific commitments apply.

[1] For greater certainty, as far as measures relating to technical standards are concerned, this Chapter applies only to those measures affecting trade in services.

3. Notwithstanding paragraph 2, this Chapter does not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards relating to:

(a) manufacturing of basic chemicals and other chemical products;

(b) manufacturing of rubber products;

(c) manufacturing of plastics products;

(d) manufacturing of electric motors, generators and transformers;

(e) manufacturing of accumulators, primary cells and primary batteries; and

(f) recycling of metal and non-metal waste and scrap.

4. Notwithstanding paragraph 1, this Chapter does not apply to measures of a Party to the extent that they constitute limitations subject to scheduling pursuant to Articles 10.5, 10.6, Article 10.11(1), 10.11(2), Articles 11.4, 11.6, 11.7, Articles 11.8(1), 11.8(2), 12.3(1), 12.4(2), 12.5(1) and Article 12.6.

5. For the purposes of this Chapter:

(a) "authorisation" means a permission to carry out any of the activities referred to in subparagraphs (a), (b) and (c) of paragraph 1 resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards;

(b) "competent authority" means a central, regional or local government or authority, or a non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is empowered to take a decision concerning the authorisation to supply a service, including through establishment of an enterprise, or concerning the authorisation to pursue any other economic activity;

(c) "licensing procedures" means administrative or procedural rules to which a natural or a juridical person seeking an authorisation, including an amendment or renewal of an authorisation, must adhere in order to demonstrate compliance with licensing requirements;

(d) "licensing requirements" means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew an authorisation;

(e) "qualification procedures" means administrative or procedural rules to which a natural person must adhere in order to demonstrate compliance with qualification requirements, for the purposes of obtaining an authorisation; and

(f) "qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service, and with which a natural person is required to comply in order to obtain, amend or renew an authorisation.

6. For the purposes of this Chapter, the definitions set out in Articles 10.2 and 11.2 also apply.

ARTICLE 13.2

Conditions for licensing and qualification

1. Each Party shall ensure that measures relating to licensing requirements, licensing procedures, and qualification requirements and qualification procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner[1].

2. The criteria referred to in paragraph 1 shall be:

(a) clear;

(b) objective and transparent; and

(c) accessible to the public and interested persons in advance.

3. When adopting technical standards, each Party shall encourage its competent authorities to adopt technical standards developed through open and transparent processes, and shall encourage bodies, including relevant international organisations[2], designated to develop technical standards to use open and transparent processes.

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1 For greater certainty, these criteria may include, *inter alia*, competence and the ability to supply a service or pursuit any other economic activity, including to do so in a manner consistent with a Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

2 The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

4. An authorisation shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation have been met.

5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

6. Subject to paragraph 5, in establishing the rules for the selection procedure, each Party may take into account legitimate policy objectives, including considerations of health, safety, protection of the environment and preservation of cultural heritage.

ARTICLE 13.3

Licensing and qualification procedures

1. Licensing and qualification procedures and formalities shall be clear, made public in advance, and shall not in themselves constitute a restriction on the supply of a service or the pursuit of any other economic activity. Each Party shall endeavour to make such procedures and formalities as simple as possible and shall not unduly complicate or delay the supply of the service or the pursuit of any other economic activity.

2. If authorisation is required, each Party shall promptly publish or otherwise make publicly available the information necessary for the applicant to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include at least the following, to the extent that it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) fees;

(d) technical standards;

(e) procedures for appeal or review of decisions concerning applications;

(f) procedures for monitoring or enforcing compliance with the terms and conditions of licences and qualifications;

(g) opportunities for public involvement, such as through hearings or comments; and

(h) indicative timeframes for processing an application.

3. Any authorisation fee[1] which the applicants may incur shall be reasonable, transparent, and not in itself restrict the supply of the relevant service or the pursuit of the relevant economic activity.

4. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the authorisation process are impartial with respect to all applicants. The competent authority shall reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the authorisation is required.

5. If specific time limits for applications apply, an applicant shall be allowed a reasonable period for the submission of an application. If possible, the competent authority should accept applications in electronic format under the same conditions of authenticity as paper submissions.

6. The competent authority shall start processing an application without undue delay after submission. Each Party shall endeavour to establish the indicative timeframe for the processing of an application and shall, at the request of the applicant and without undue delay, ensure that the competent authority provides information concerning the status of the application. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable period of time after the date of submission of a complete application.

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[1] Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

7. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, identify, to the extent feasible, the additional information required to complete the application, and provide the applicant with the opportunity to correct inadequacies in the application.

8. The competent authority shall accept copies of documents that are authenticated in accordance with the Party's law, instead of original documents, unless the competent authority requires original documents to protect the integrity of the authorisation process.

9. If an application is rejected by the competent authority, the applicant shall be informed, either on its own request or on the competent authority's initiative, in writing and without undue delay. In principle, the applicant shall be informed of the reasons for the decision to reject the application and of the timeframe for submitting an appeal against that decision. An applicant shall be permitted, within a reasonable time period, to resubmit an application.

10. Each Party shall ensure that an authorisation, once granted, enters into effect without undue delay and in accordance with the terms and conditions specified therein.

11. Where examinations are required for an authorisation, the competent authority shall ensure that such examinations occur at reasonably frequent intervals, and provide a reasonable period of time to enable applicants to request to take the examination.

ARTICLE 13.4

Review

If the results of the negotiations related to paragraph 4 of Article VI of GATS enter into force, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Agreement.

ARTICLE 13.5

Administration of measures of general application

Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

ARTICLE 13.6

Appeal of administrative decisions

Each Party shall maintain or institute judicial, arbitral or administrative tribunals, or procedures which provide, on request of an affected investor or service supplier, a prompt review of, and where justified, appropriate remedies for administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purposes. If such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures provide for an objective and impartial review.

# CHAPTER 14

# MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

## ARTICLE 14.1

### Mutual recognition of professional qualifications

1. Nothing in this Chapter shall prevent a Party from requiring that natural persons possess the necessary qualifications and professional experience required in the territory where the activity is performed, for the sector of activity concerned.

2. Each Party shall encourage professional bodies or authorities relevant to the sector of activity concerned, in its territory, to develop and provide joint recommendations on mutual recognition of professional qualifications to the Sub-Committee on Services and Investment referred to in Article 11.10. Such joint recommendations shall be supported by an evidence-based assessment of:

(a) the economic value of an envisaged arrangement on mutual recognition of professional qualifications ("mutual recognition arrangement"); and

(b) the compatibility of the respective regimes, that is, the extent to which the requirements applied by each Party for the authorisation, licensing, operation and certification are compatible.

3. Upon receipt of a joint recommendation, the Sub-Committee on Services and Investment shall review its consistency with this Agreement within a reasonable period of time. That Sub-Committee may, following such review, develop and recommend to the Trade Council to adopt, pursuant to subparagraph (a) of Article 33.1(6), a decision on a mutual recognition arrangement in order to determine or amend mutual recognition arrangements set out in Annex 14-B[1].

4. An arrangement as referred to in paragraph 3 of this Article shall provide for the conditions for recognition of professional qualifications acquired in the European Union and professional qualifications acquired in Chile relating to an activity covered by Chapter 10, 11, 12 or 19.

5. The guidelines for arrangements on the recognition of professional qualifications set out in Annex 14-A shall be taken into account in the development of the joint recommendations referred to in paragraph 2 of this Article and by the Trade Council when assessing whether to adopt the arrangement referred to in paragraph 3 of this Article.

[1] For greater certainty, mutual recognition arrangements shall not lead to the automatic recognition of professional qualifications but shall set, in the mutual interest of the Parties, the conditions for the competent authorities granting recognition of such qualifications.

# CHAPTER 15

# DELIVERY SERVICES

## ARTICLE 15.1

### Scope and definitions

1. This Chapter sets out the principles of the regulatory framework for all delivery services.

2. For the purposes of this Chapter:

(a) "delivery services" means postal and courier or express services, including activities of collection, sorting, transport, and delivery of postal items;

(b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability, and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

(c) "express mail services" means international express delivery services supplied through the Express Mail Service Cooperative, which is the voluntary association of designated postal operators under the Universal Postal Union;

(d) "licence" means an authorisation, granted to an individual supplier of delivery services by a competent regulatory authority, setting out procedures, obligations and requirements specific to the delivery services sector;

(e) "postal item" means an item up to 31,5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;

(f) "postal monopoly" means the exclusive right to supply specified delivery services in the territory of a Party pursuant to laws of that Party; and

(g) "universal service" means the permanent supply of a delivery service of a specified quality at all points in the territory of a Party at affordable prices for all users.

ARTICLE 15.2

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party that maintains a universal service obligation shall administer it in a transparent, non-discriminatory and neutral manner with regard to all suppliers of delivery services subject to the obligation.

2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to those services over other international express delivery services.

ARTICLE 15.3

Prevention of market distortive practices

Each Party shall ensure that a supplier of delivery services that is subject to a universal service obligation or a postal monopoly does not engage in market distortive practices such as:

(a) using revenues derived from the supply of a service subject to a universal service obligation or a postal monopoly to cross-subsidise the supply of an express delivery service or any non-universal delivery service; or

(b) unjustifiably differentiating among customers such as businesses or large-volume mailers or consolidators with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

ARTICLE 15.4

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

(a) all licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of the licence.

2. The procedures, obligations and requirements of a licence shall be transparent, non-discriminatory and based on objective criteria.

3. If an application for a licence is rejected by the competent regulatory authority, it shall inform the applicant of the reasons for the rejection in writing. Each Party shall establish or maintain an appeal procedure through a body that is independent from the parties involved in the licence application procedure. That body may be a tribunal or court.

## ARTICLE 15.5

### Independence of the regulatory authorities

1. Each Party shall ensure that any authority responsible for regulating delivery services is not accountable to any supplier of delivery services, and that the decisions and procedures that the regulatory authority adopts are impartial, non-discriminatory and transparent with respect to all market participants in its territory.

2. Each Party shall ensure that the authority responsible for regulating delivery services performs its tasks in a timely manner and has adequate financial and human resources.

# CHAPTER 16

# TELECOMMUNICATIONS SERVICES

## ARTICLE 16.1

### Scope

1. This Chapter sets out the principles of the regulatory framework for the provision of telecommunications networks and services liberalised pursuant to Chapters 10 and 11.

2. This Chapter does not apply to services providing, or exercising editorial control over, content transmitted using telecommunications networks and services.

## ARTICLE 16.2

### Definitions

For the purposes of this Chapter:

(a) "associated facilities" means services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the provision of services through that network or service or have the potential to do so, and may include buildings or entries to buildings, building wiring, antennas, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;

(b) "essential facilities" means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier, irrespective of whether those services are provided by the suppliers involved or by any other supplier who has access to the network;

(d) "internet access services" means public telecommunications services that provide access to the internet in the territory of a Party, and thereby provide connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;

(e) "leased circuits" means telecommunications services or facilities between two or more designated points, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user;

(f) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for telecommunications networks or services as a result of its control over essential facilities or the use of its position in that market;

(g) "network elements" means facilities or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of those facilities or equipment;

(h) "number portability" means:

(i) for the European Union, the ability of a subscriber who so requests to retain the existing telephone number, at the same location in the case of fixed line subscribers, when switching between the same category of suppliers of public telecommunications services, without impairment of quality, reliability or convenience; and

(ii) for Chile, the ability of an end-user to retain, upon request, the existing telephone number when switching between suppliers of public telecommunications services, without impairment of quality, reliability or convenience;

(i) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;

(j) "public telecommunications service" means any telecommunications service that is offered to the public generally;

(k) "subscriber" means any natural or juridical person that is party to a contract with a supplier of public telecommunications services for the supply of such services;

(l) "telecommunications" means the transmission and reception of signals by any electromagnetic means;

(m) "telecommunications network" means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical or other electromagnetic means;

(n) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Chapter[1];

(o) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including of broadcasting signals, via telecommunications networks, including via networks used for broadcasting;

(p) "universal service" means the minimum set of services of specified quality that must be made available to all users in the territory of a Party, regardless of their geographical location and at an affordable price; and

(q) "user" means any natural or juridical person using a public telecommunications network or service.

[1] For greater certainty, telecommunications regulatory authority includes any authority charged by a Party with the enforcement of the obligations set out in this Chapter.

ARTICLE 16.3

Telecommunications regulatory authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, services or equipment, and that the decisions adopted, and the procedures used, by its telecommunications regulatory authority are impartial with respect to all market participants.

2. A Party that retains ownership or control of suppliers of telecommunications networks, services or equipment shall ensure the effective structural separation of the telecommunications regulatory function from activities associated with that ownership or control.

3. With a view to ensuring the independence and impartiality of telecommunications regulatory authorities, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of telecommunications networks, services or equipment.

4. Each Party shall ensure that suppliers of telecommunications networks, services or equipment do not influence the decisions and procedures of the telecommunications regulatory authority.

5. Each Party shall provide its telecommunications regulatory authority with the regulatory and supervisory power, as well as adequate financial and human resources, to carry out the tasks assigned to it in order to enforce the obligations set out in this Chapter. Such power shall be exercised transparently and in a timely manner. Those tasks shall be made public in an easily accessible and clear form, in particular when those tasks are assigned to more than one body.

6. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Any information provided shall be treated in accordance with the requirements of confidentiality.

7. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision issued by its telecommunications regulatory authority has a right to appeal against that decision to an appeal body that is independent of the telecommunications regulatory authority and of other parties affected by the decision. Pending the outcome of the appeal, the decision issued by the telecommunications regulatory authority shall stand unless interim measures are granted in accordance with the law of the Party of that authority.

## ARTICLE 16.4

### Authorisation to provide telecommunications networks or services

1. If a Party requires an authorisation for the provision of telecommunications networks or services, it shall state a reasonable period of time normally required for the telecommunications regulatory authority to decide on the authorisation request, shall communicate that period of time to the applicant in a transparent manner and shall endeavour to decide on the request within the communicated period of time[1].

[1] For greater certainty, this Article does not preclude a Party from authorising the provision of telecommunications networks or services upon simple notification without having to wait for a decision by the telecommunications regulatory authority.

2. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent, proportionate and related to the services provided.

3. Each Party shall ensure that an applicant receives in writing the reasons for the denial or the revocation of an authorisation, or for the imposition of supplier-specific conditions. In the event of such denial, revocation or imposition, an applicant shall be able to seek recourse before an appeal body.

4. Administrative fees imposed on suppliers, if any, shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Chapter[1].

ARTICLE 16.5

Interconnection

Without prejudice to Article 16.9, each Party shall ensure that a supplier of public telecommunications networks or services in its territory has the right and, on request of another supplier of public telecommunications networks or services in its territory, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services within its territory.

[1] Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 16.6

Access and use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of any public telecommunications networks or services on reasonable and non-discriminatory[1] terms and conditions, in accordance with, *inter alia*, paragraphs 2 to 5.

2. Each Party shall ensure that any service supplier of the other Party has access to and use of any public telecommunications service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraph 5, that such supplier is permitted to:

(a) purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to provide its services;

(b) interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another supplier of telecommunications services; and

(c) use operating protocols of its choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.

[1] For the purposes of this Article, "non-discriminatory" means most-favoured-nation treatment and national treatment as defined in Articles 10.6, 10.8, 11.4 and 11.5, as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

3. Each Party shall ensure that a service supplier of the other Party may use public telecommunications networks or services for the movement of information within and across the border of that Party, including for intra-corporate communications of such service supplier, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services in its territory other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

ARTICLE 16.7

Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights or obligations that arise from this Chapter, and on request of either disputing party, the telecommunications regulatory authority issues a binding decision within a reasonable period of time to resolve the dispute.

2. Each Party shall ensure that the decision issued by the telecommunications regulatory authority is made available to the public, subject to the requirements of business confidentiality under its laws and regulations. The telecommunications regulatory authority shall provide the disputing parties with a full statement of the reasons on which the decision is based. The disputing parties shall have the right to appeal that decision, in accordance with Article 16.3(7).

3. Each Party shall ensure that the procedure referred to in paragraphs 1 and 2 does not preclude either disputing party from bringing an action before a judicial authority, in accordance with the laws and regulations of the Party.

ARTICLE 16.8

Competitive safeguards on major suppliers

Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices, including:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 16.9

Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Major suppliers shall provide such interconnection:

(a) under non-discriminatory terms and conditions, including with regard to rates, technical standards, specifications, quality and maintenance, and of a quality no less favourable than that provided for their own like services, or for like services of their subsidiaries or other affiliates;

(b) in a timely fashion and on terms and conditions, including in relation to rates, technical standards, specifications, quality and maintenance, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall make publicly available the procedures applicable for interconnection with a major supplier.

3. Each Party shall ensure that major suppliers make publicly available either their interconnection agreements or their reference interconnection offers, as appropriate.

ARTICLE 16.10

Access to the essential facilities of major suppliers

Each Party shall provide its telecommunications regulatory authority with the power to require that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and conditions for the purpose of providing telecommunications network or services, unless this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The essential facilities of a major supplier may include network elements, leased circuits services and associated facilities.

ARTICLE 16.11

Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of objectives of general interest. Procedures, conditions and obligations attached to rights of use shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. Each Party shall make the current use of allocated frequency bands publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.

3. The measures of a Party allocating and assigning spectrum and managing frequency are not in themselves inconsistent with Articles 10.5 and 11.7. Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

ARTICLE 16.12

Number portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability on a timely basis and on reasonable terms and conditions.

ARTICLE 16.13

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Universal service obligations will not be regarded as anti-competitive in themselves, provided that they are administered in a proportionate, transparent, objective and non-discriminatory manner. The administration of such obligations shall be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by the Party.

3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services and shall designate universal service suppliers through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to fund the provision of universal service by a supplier, it shall ensure that such funding does not exceed the net cost resulting from the universal service obligation.

## ARTICLE 16.14

## Confidentiality of information

1. Each Party shall ensure that suppliers of telecommunications networks or services that acquire confidential information from another supplier of telecommunications networks or services in the process of negotiating arrangements pursuant to Articles 16.5, 16.6, 16.9 and 16.10 use that information solely for the purposes for which it was supplied and respect at all times the confidentiality of such information.

2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, provided that any measures it adopts to that end are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 16.15

Foreign shareholding

With regard to the provision of telecommunications networks or services, other than public radio broadcasting, through commercial presence, a Party shall not impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or in terms of the total value of individual or aggregate foreign investment.

ARTICLE 16.16

Open and non-discriminatory internet access

1. Each Party shall adopt or maintain measures to ensure that suppliers of internet access services enable users of those services to access and distribute information, content and services of their choice.

2. Paragraph 1 is without prejudice to the laws and regulations of a Party related to the lawfulness of the information, content or services referred to in that paragraph.

3. Notwithstanding paragraph 1, suppliers of internet access services may implement non-discriminatory[1], reasonable, transparent and proportionate network management measures which are consistent with the laws and regulations of a Party.

[1] Subject to the exceptions provided in the laws and regulations of a Party.

4. Each Party shall adopt or maintain measures to ensure that suppliers of internet access services enable users of those services to use devices of their choice, provided that such devices do not harm the security of other devices, the network or services provided over the network.

## ARTICLE 16.17

## International mobile roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services in ways that can help promote the growth of trade among the Parties and enhance consumer welfare.

2. Each Party may take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to the public; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby users visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

# CHAPTER 17

# INTERNATIONAL MARITIME TRANSPORT SERVICES

## ARTICLE 17.1

### Scope, definitions and principles

1. This Chapter sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters 10, 11 and 12.

2. For the purposes of this Chapter and Chapters 10, 11 and 12 and of Annexes 10-A, 10-B and 10-C:

(a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing them and making them available for shipments;

(b) "customs clearance services" or "customs house brokers' services" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

(c) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "feeder services" means the pre- and on-ward transportation by sea, between ports located in a Party, of international cargo, notably containerised, *en route* to a destination outside the territory of that Party;

(e) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers through the acquisition of transport and related services, preparation of documentation and provision of business information;

(f) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third country, or between a port of one Member State and a port of another Member State;

(g) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of one Party and a port of the other Party or of a third country, including the direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services;

(h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; or

(ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(i) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services; and

(j) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when that workforce is organised independently of the stevedoring or terminal operator companies; the activities covered include the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

(ii) the lashing or unlashing of cargo; and

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge.

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

(a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and

(b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, including with regard to access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

4. In applying the principles referred to in paragraph 3, each Party shall:

(a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements if they exist in previous agreements; and

(b) as from the date of entry into force of this Agreement, abolish and abstain from introducing any unilateral measures or administrative, technical or other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime transport service suppliers of the other Party to have an enterprise established and operating in its territory in accordance with the conditions provided for in its schedule of specific commitments in Annexes 10-A, 10-B and 10-C.

6. Each Party shall make available to international maritime transport service suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, and berth and berthing services.

7. Each Party shall permit the international maritime transport service suppliers of the other Party to reposition owned or leased empty containers which are not being carried as cargo against payment between ports of Chile or between ports of a Member State.

# CHAPTER 18

# FINANCIAL SERVICES

## ARTICLE 18.1

### Scope

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

(a) financial institutions of the other Party;

(b) investors of the other Party and financial institutions of such investors in the territory of the Party; or

(c) cross-border trade in financial services.

2. For greater certainty, Chapter 10 applies to a measure:

(a) relating to an investor of a Party in a covered enterprise as defined in subparagraph (d) of Article 10.2(1) that is not a financial institution but is supplying a financial service in the territory of the other Party, or to such covered enterprise; and

(b) other than a measure relating to the supply of financial services, relating to an investor of a Party, or a covered enterprise established by that investor in the territory of the other Party that is a financial institution.

3. The provisions of Chapters 10 and 11 apply to measures within the scope of this Chapter only to the extent that those provisions are incorporated into and made part of this Chapter.

4. Articles 10.12 and 11.9 are incorporated into and made part of this Chapter.

5. This Chapter does not apply to a measure adopted or maintained by a Party relating to:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities or services forming part of a public retirement plan or statutory system of social security; or

(c) activities or services conducted for the account of the Party, with the guarantee or using the financial resources of the Party, including its public entities.

6. Notwithstanding paragraph 5, this Chapter applies to the extent that a Party allows any of the activities or services referred to in subparagraph (b) or (c) of paragraph 5 to be conducted by its financial institutions in competition with a public entity or a financial institution.

7. Articles 18.3 and 18.5 to 18.9 do not apply with respect to public procurement.

8. Articles 18.3 and 18.5 to 18.8 do not apply with respect to subsidies granted by a Party, including government-supported loans, guarantees and insurances.

ARTICLE 18.2

Definitions

For the purposes of this Chapter and Annex 18:

(a) "cross-border financial service supplier of a Party" means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply, or supplies, a financial service through the cross-border supply of such service;

(b) "cross-border supply of financial services" or "cross-border trade in financial services" means the supply of a financial service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party by a person of that Party to a services consumer of the other Party;

(c) "financial institution" means a supplier of one or more financial services which is regulated or supervised in respect of the supply of those services as a financial institution under the law of the Party in whose territory it is located, including a branch in the territory of the Party of that financial service supplier whose head offices are located in the territory of the other Party;

(d) "financial service" means a service of a financial nature, including insurance and insurance-related services, banking and other financial services (excluding insurance). Financial services include the following activities:

(i) insurance and insurance-related services:

(A) direct insurance (including co-insurance):

(1) life; and

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance inter-mediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk-assessment and claim-settlement services; and

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(1) money market instruments (including cheques, bills, certificates of deposits);

(2) foreign exchange;

(3) derivative products including futures and options;

(4) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;

(5) transferable securities; or

(6) other negotiable instruments and financial assets, including bullion;

(G) 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;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, and custodial, depository and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software; and

(L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) to (K), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

(e) "financial service supplier of a Party" means a natural or juridical person of a Party that seeks to supply, or supplies, a financial service, but does not include a public entity;

(f) "investor of a Party" means a natural or juridical person of a Party that seeks to establish, is establishing or has established a financial institution in the territory of the other Party;

(g) "juridical person of a Party" means:

(i) for the European Union: a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations[1] in the territory of the European Union; and

(ii) for Chile: a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile;

(h) "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, which 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;

(i) "public entity" means:

(i) a government, a central bank or a monetary authority of a Party, or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, but does not include an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity that performs functions normally performed by a central bank or monetary authority, when exercising those functions; and

[1] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(j) "self-regulatory organisation" means a non-governmental body, including a securities or futures exchange or market, clearing agency or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central, regional or local governments or authorities, where applicable.

ARTICLE 18.3

National treatment

1. Each Party shall accord to investors in financial institutions of the other Party and to covered enterprises that are financial institutions, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to its own investors in financial institutions and to their enterprises that are financial institutions.

2. Each Party shall accord to investors in financial institutions of the other Party and to covered enterprises that are financial institutions, with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[2], to its own investors in financial institutions and to their enterprises that are financial institutions.

[1] For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

[2] For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

3. The treatment accorded by a Party under paragraphs 1 and 2 means:

(a) with respect to a regional or local government of Chile, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to investors in financial institutions of Chile and to their enterprises that are financial institutions in its territory;

(b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors in financial institutions of that Member State and to their enterprises that are financial institutions in its territory[1].

ARTICLE 18.4

Public procurement

1. Each Party shall ensure that financial institutions of the other Party established in its territory are accorded treatment no less favourable than that accorded, in like situations, to its own financial institutions with respect to any measure regarding the purchase of goods or services by a procuring entity for governmental purposes.

2. The application of the national treatment obligation provided for in this Article remains subject to security and general exceptions as set out in Article 21.3.

[1] For greater certainty, the treatment accorded by a government of, or in, a Member State includes the regional and local level of government, when applicable.

ARTICLE 18.5

Most-favoured-nation treatment

1. Each Party shall accord to investors in financial institutions of the other Party and to covered enterprises that are financial institutions, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to investors in financial institutions of a third country and to their enterprises that are financial institutions.

2. Each Party shall accord to investors in financial institutions of the other Party and to covered enterprises that are financial institutions with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[2], to investors in financial institutions of a third country and to their enterprises that are financial institutions.

3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to investors in financial institutions of the other Party or to covered enterprises that are financial institutions the benefit of any treatment resulting from measures providing for the recognition of standards, including of the standards or criteria for the authorisation, licensing or certification of a natural person or an enterprise for carrying out an economic activity, or of prudential measures.

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1 For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

2 For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

4. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not include investment dispute resolution procedures or mechanisms provided for in other international investment treaties or trade agreements. The substantive provisions in other international investment treaties or trade agreements do not in themselves constitute "treatment" as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party. Measures of a Party applied pursuant to such substantive provisions may constitute "treatment" under this Article and thus give rise to a breach of this Article.

## ARTICLE 18.6

## Market access

1. In the sectors or subsectors listed in Sections B of Appendices 18-1 and 18-2 where market access commitments are undertaken, a Party shall not adopt or maintain, with respect to market access through the establishment or operation of financial institutions by investors of the other Party, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

(a) limits the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

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

(d) limits the total number of natural persons that may be employed in a particular financial services sector or that a financial institution 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 the requirement of an economic needs test; or

(e) restricts or requires specific types of legal entity or joint venture through which a financial institution may supply a service.

2. For greater certainty, this Article does not prevent a Party from requiring a financial institution to supply certain financial services through separate legal entities if, under the law of that Party, the range of financial services supplied by the financial institution cannot be supplied through a single entity.

ARTICLE 18.7

Cross-border supply of financial services

1. Articles 11.4, 11.5, 11.6 and 11.7 are incorporated into and made part of this Chapter, and apply to measures affecting cross-border financial service suppliers supplying the financial services set out in Section A of Appendices 18-1 and 18-2.

2. A Party shall permit persons located in its territory, and its natural persons wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define "do business" and "solicit" for the purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1 of this Article.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

## ARTICLE 18.8

### Senior management and boards of directors

A Party shall not require that a financial institution of the other Party, which is established in its territory, appoints natural persons of a particular nationality as members of boards of directors or to a senior management position, such as executives or managers.

ARTICLE 18.9

Performance requirements

1. A Party shall not, in connection with the establishment or operation of a financial institution of a Party or of a third country in its territory, impose or enforce any requirement or enforce any commitment or undertaking to:

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

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

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

(d) 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 financial institution;

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

(f) transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;

(g) supply exclusively from the territory of the Party the goods it produces or the services it supplies to a specific regional or world market;

(h) locate the headquarters of that financial institution for a specific region of the world, which is broader than the territory of the Party, or the world market in its territory;

(i) hire a given number or percentage of its nationals; or

(j) restrict the exportation or sale for export.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of a financial institution of a Party or of a third country in its territory, 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 or services provided in its territory, or purchase goods or services from natural persons or enterprises 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 financial institution;

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

(e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or the operation of financial institutions in its territory by an investor of a Party or a third country, 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.

4. Subparagraph (f) of paragraph 1 does not apply if:

(a) a Party authorises the use of an intellectual property right in accordance with Article 31 or 31*bis* of the TRIPS Agreement or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

(b) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority in order to remedy a practice determined after judicial or administrative process to be a violation of the competition laws of the Party.

5. Subparagraphs (a), (b) and (c) of paragraph 1 and subparagraphs (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

6. Subparagraphs (a) and (b) of paragraph 2 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.

7. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex 18.

8. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

ARTICLE 18.10

Non-conforming measures

1. Articles 18.3, 18.5, 18.7, 18.8 and 18.9 do not apply to:

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

(i) for the European Union:

(A) the European Union, as set out in Section C of Appendix 18-1;

(B) the central government of a Member State, as set out in Section C of Appendix 18-1;

(C) a regional level of government of a Member State, as set out in Section C of Appendix 18-1; or

(D) a local level of government; and

(ii) for Chile:

(A) the central government, as set out in Section C of Appendix 18-2;

(B) a regional level of government, as set out in Section C of Appendix 18-2; or

(C) a local level of government;

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

(c) a modification to any non-conforming measure referred to in subparagraph (a) of this paragraph to the extent that the modification does not decrease the conformity of the measure, as it existed immediately before the modification, with Articles 18.3, 18.5, 18.7, 18.8 or 18.9.

2. Articles 18.3, 18.5, 18.7, 18.8 and 18.9 do not apply to any measure of a Party with respect to sectors, subsectors or activities, as set out by that Party in Section D of Appendices 18-1 and 18-2, respectively.

3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by Section D of Appendix 18-1 or 18-2, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of its financial institution existing at the time the measure becomes effective.

4. Article 18.6 does not apply to any measure of a Party with respect to sectors, subsectors or activities as set out by that Party in Section B of Appendix 18-1 or 18-2.

5. Where a Party has set out a reservation to Articles 10.6, 10.8, 10.9, 10.10, 11.4 or 11.5 in Annex 10-A or 10-B, that reservation also constitutes a reservation to Articles 18.3, 18.5, 18.7, 18.8 or 18.9, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

ARTICLE 18.11

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) for the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

(b) to ensure the integrity and stability of the financial system of a Party.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement.

ARTICLE 18.12

Treatment of information

Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 18.13

Domestic regulation and transparency

1. Chapter 13, with the exception of subparagraphs (c) to (f) of Article 13.1(5), and Chapter 29 do not apply to measures of a Party within the scope of this Chapter.

2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall:

(a) publish in advance:

(i) the laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of this Chapter; or

(ii) documents that provide sufficient details about such possible new laws and regulations to allow interested persons and the other Party to assess whether and how their interests might be significantly affected;

(b) provide interested persons and the other Party a reasonable opportunity to submit comments on any proposed laws and regulations or documents published pursuant to subparagraph (a);

(c) consider any comments submitted in accordance with subparagraph (b); and

(d) allow a reasonable time between the publication of any laws and regulations pursuant to subparagraph (a)(i) and the date on which financial service suppliers must comply with them.

3. This Article applies to measures of a Party relating to licensing requirements and procedures and qualification requirements and procedures, and applies only in sectors for which the Party has undertaken specific commitments under this Chapter, and to the extent that those specific commitments apply.

4. If a Party adopts or maintains measures relating to the authorisation for the supply of a financial service, it shall ensure that:

(a) those measures are based on objective and transparent criteria[1];

(b) the authorisation procedures are impartial, and adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist; and

(c) the authorisation procedures do not in themselves unjustifiably prevent fulfilment of the requirements.

[1] Such criteria may include, *inter alia*, competence and the ability to supply a service, including the ability to do so in a manner consistent with the regulatory requirements of a Party. Competent authorities may assess the weight to be given to each criterion.

5. If a Party requires authorisation[1] for the supply of a financial service, it shall promptly publish or otherwise make publicly available the information necessary for the applicant to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, where available:

(a) the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licences and qualifications; and

(e) opportunities for public involvement, such as through hearings or comments.

6. If a Party requires authorisation for the supply of a financial service, the competent authorities of that Party shall:

(a) to the extent practicable, permit an applicant to submit an application at any time throughout the year[2];

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[1] For the purposes of this Chapter, "authorisation" means the permission to supply a financial service, resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licensing requirements or qualification requirements.

[2] For greater certainty, competent authorities are not required to start considering applications outside of their official working hours and working days.

(b) allow a reasonable period of time for the submission of an application if specific time periods for applications exist;

(c) initiate the processing of the application without undue delay;

(d) endeavour to accept applications in electronic format under the same conditions of authenticity as paper submissions; and

(e) accept copies of documents which are authenticated in accordance with the law of the Party in place of original documents, unless they require original documents to protect the integrity of the authorisation process.

7. Each Party shall endeavour to make authorisation procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the financial service.

8. Each Party shall endeavour to establish the indicative timeframe for processing an application and shall, on request of the applicant and without undue delay, provide information concerning the status of the application.

9. If a competent authority considers an application incomplete for processing under the laws and regulations of the Party, it shall, within a reasonable period of time, and to the extent practicable:

(a) inform the applicant that the application is incomplete;

(b) at the request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and

(c) provide the applicant with the opportunity[1] to submit the additional information required to complete the application.

10. If none of the actions set out in subparagraph (a), (b) or (c) of paragraph 9 is practicable, the competent authorities shall nevertheless, if the application is rejected due to incompleteness, ensure that they inform the applicant thereof within a reasonable period of time.

11. Each Party shall ensure that its competent authorities, with respect to authorisation fees[2] that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the commitments or obligations of the Party.

12. A competent authority shall take its decision in an independent manner and not be accountable to any person supplying the services for which the licence or authorisation is required.

13. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application, and that the applicant is informed of the decision concerning the application, to the extent possible, in writing.

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[1] Such opportunity does not require a competent authority to provide extensions of deadlines.

[2] Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

14. If an application is rejected by the competent authority, the applicant shall be informed, either on its own request or upon the initiative of the competent authority, in writing and without undue delay. To the extent practicable, the applicant shall be informed of the reasons for the decision to reject the application and of the timeframe for an appeal against that decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

15. If examinations are required for an authorisation, the competent authority shall ensure that such examinations are organised at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request taking the examination.

16. Each Party shall ensure that an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

ARTICLE 18.14

Financial services new to the territory of a Party

1. A Party shall permit a financial institution of the other Party, other than a branch, to supply any new financial service that the former Party would permit its own financial institutions to supply in accordance with its law, in like situations, provided that the introduction of the new financial services does not require new laws or regulations or the modification of existing laws or regulations.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If such authorisation is required, a decision shall be made within a reasonable period of time and the authorisation shall only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party requesting it to consider authorising the supply of a financial service that is not supplied within the territory of either Party. Such application is subject to the law of the Party receiving the application and is not subject to the obligations of this Article.

## ARTICLE 18.15

### Self-regulatory organisations

When a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to a self-regulatory organisation in order to provide a financial service in or into the territory of the former Party, it shall ensure that the self-regulatory organisation observes the obligations set out in Articles 10.6, 10.8, 11.4 and 11.5.

ARTICLE 18.16

Payment and clearing systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article does not confer access to the lender of last resort facilities of the Party.

ARTICLE 18.17

Sub-Committee on Financial Services

1. The Sub-Committee on Financial Services ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties responsible for financial services.

2. The Sub-Committee shall:

(a) supervise the implementation of this Chapter;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) carry out a dialogue on the regulation of the financial services sector with a view to improving mutual knowledge of the respective regulatory systems of the Parties and to cooperate in the development of international standards.

ARTICLE 18.18

Technical discussions and consultations

1. A Party may request technical discussions and consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to that request. The Parties shall report the results of their discussions and consultations to the Sub-Committee.

2. Each Party shall ensure that in those technical discussions and consultations, its delegation includes officials with the relevant expertise in financial services.

3. For greater certainty, nothing in this Article shall be construed as requiring a Party to:

(a) derogate from its relevant laws and regulations regarding the sharing of information among financial regulators or from the requirements of an agreement or arrangement between financial authorities of the Parties; or

(b) require regulatory authorities to take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed as impeding a Party that requires information for supervisory purposes concerning a financial institution located in the territory of the other Party or a cross-border financial service supplier of the other Party from approaching the competent regulatory authority of the other Party to seek the information.

5. For greater certainty, this Article is without prejudice to either Party's rights and obligations under Chapter 31.

## ARTICLE 18.19

### Dispute settlement

1. Chapter 31, including Annexes 31-A and 31-B, applies as modified by this Article to the settlement of disputes concerning the application or interpretation of this Chapter.

2. In addition to the requirements set out in Article 31.9, panellists shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, unless the Parties agree otherwise.

3. The Sub-Committee shall recommend that the Trade Committee establish a list of at least 15 individuals, fulfilling the requirements referred to in paragraph 2, who are willing and able to serve as panellists. The Trade Committee shall establish such a list no later than one year after the date of entry into force of this Agreement. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by Chile; and

(c) one sub-list of individuals that are not nationals of either Party and who shall serve as chairperson to the panel.

4. Each sub-list shall include at least five individuals. The Trade Committee shall ensure that the list is always maintained at that minimum number of individuals.

5. For the purposes of this Chapter, the list referred to in paragraph 3 of this Article shall, after its establishment, replace the list established pursuant to Article 31.8(1).

# CHAPTER 19

# DIGITAL TRADE

## SECTION A

## GENERAL PROVISIONS

### ARTICLE 19.1

### Scope

1. This Chapter applies to trade enabled by electronic means.

2. This Chapter does not apply to audio-visual services.

### ARTICLE 19.2

### Definitions

1. The definitions in Articles 10.2 and 11.2 apply to this Chapter.

2. For the purposes of this Chapter:

(a) "consumer" means any natural person, or juridical person if provided for in the laws and regulations of a Party, using or requesting a public telecommunications service for purposes outside its trade, business or profession;

(b) "direct marketing communication" means any form of commercial advertising by which a natural or juridical person communicates marketing messages directly to end-users via a public telecommunications service and covers at least electronic mail and text and multimedia messages;

(c) "electronic authentication" means a process that enables the confirmation of:

(i) the electronic identification of a natural or juridical person; or

(ii) the origin and integrity of data in electronic form;

(d) "electronic seal" means data in electronic form used by a juridical person which are attached to, or logically associated with, other data in electronic form to ensure the origin and integrity of those other data;

(e) "electronic signature" means data in electronic form which are attached to, or logically associated with, other data in electronic form, and fulfils the following requirements:

(i) it is used by a natural person to agree on the data in electronic form to which it relates; and

(ii) it is linked to the data in electronic form to which it relates in such a way that any subsequent alteration in the data in electronic form is detectable;

(f) "electronic trust services" means an electronic service consisting of the creation, verification, and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery, website authentication and certificates related to that service;

(g) "end-user" means any natural or juridical person using or requesting a public telecommunications service, either as a consumer or, if provided for in the laws and regulations of a Party, for trade, business or professional purposes;

(h) "personal data" means personal data as defined in subparagraph (u) of Article 1.3; and

(i) "public telecommunications service" means public telecommunications service as defined in subparagraph (j) of Article 16.2.

ARTICLE 19.3

Right to regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

ARTICLE 19.4

Exceptions

Nothing in this Chapter prevents the Parties from adopting or maintaining measures in accordance with Articles 18.11, 32.1 and 32.2 for the public interest reasons set out therein.

SECTION B

DATA FLOWS AND PERSONAL DATA PROTECTION

ARTICLE 19.5

Cross-border data flows

The Parties are committed to ensuring cross-border data flows to facilitate digital trade. To that end, a Party shall not restrict cross-border data flows between the Parties by:

(a) requiring the use of computing facilities or network elements in the territory of that Party for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of that Party;

(b) requiring the localisation of data in the territory of that Party for storage or processing;

(c) prohibiting storage or processing in the territory of the other Party; or

(d) making the cross-border transfer of data contingent upon the use of computing facilities or network elements in the territory of that Party or upon localisation requirements in the territory of that Party.

ARTICLE 19.6

Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in that regard contribute to trust in the digital economy and to the development of trade.

2. Each Party may adopt and maintain the measures it deems appropriate to ensure the protection of personal data and privacy, including the adoption and application of rules for the cross-border transfer of personal data. Nothing in this Agreement shall affect the protection of personal data and privacy afforded by the measures of a Party.

SECTION C

SPECIFIC PROVISIONS

ARTICLE 19.7

Customs duties on electronic transmissions

A Party shall not impose customs duties on electronic transmissions between a person of that Party and a person of the other Party.

ARTICLE 19.8

No prior authorisation

1. A Party shall not require prior authorisation solely on the ground that a service is provided online[1], or adopt or maintain any other requirement having equivalent effect.

2. Paragraph 1 does not apply to telecommunications services, broadcasting services, gambling services, legal representation services, or services of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority.

[1] A service is provided online when it is provided by electronic means and without the persons being simultaneously present.

ARTICLE 19.9

Conclusion of contracts by electronic means

1. Each Party shall ensure that its laws and regulations allow contracts to be concluded by electronic means and that the legal requirements for contractual processes do not create obstacles to the use of contracts concluded by electronic means or result in such contracts being deprived of legal effect and validity by reason of their having been concluded by electronic means.

2. Paragraph 1 does not apply to:

(a) broadcasting services, gambling services and legal representation services;

(b) services of notaries or equivalent professions involving a direct and specific connection with the exercise of public authority; and

(c) contracts that establish or transfer rights in real estate, contracts requiring by law the involvement of courts, public authorities or professions exercising public authority, contracts of suretyship granted and collateral securities furnished by persons acting for purposes outside their trade, business or profession, and contracts governed by family law or by the law of succession.

ARTICLE 19.10

Electronic trust services and electronic authentication

1. A Party shall not deny the legal effect or admissibility as evidence in judicial or administrative proceedings of an electronic trust service or an electronic authentication on the basis that it is in electronic form.

2. A Party shall not adopt or maintain measures that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate method of electronic authentication for their transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to prove to judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust services or electronic authentication.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of electronic transactions, the method of electronic authentication or electronic trust service:

(a) is certified by an authority accredited in accordance with its law; or

(b) meets certain performance standards which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of electronic transactions concerned.

ARTICLE 19.11

Online consumer trust

1. The Parties recognise the importance of enhancing consumer trust in digital trade. Each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including measures that:

(a) prohibit fraudulent and deceptive commercial practices;

(b) require suppliers of goods and services to act in good faith and abide by fair commercial practices, including through the prohibition of charging consumers for unsolicited goods and services;

(c) require suppliers of goods or services to provide consumers with clear and thorough information regarding their identity and contact details[1], as well as regarding the goods or services, the transaction and the applicable consumer rights; and

(d) grant consumers access to redress in order to claim their rights, including a right to remedies where goods or services are paid and not delivered or provided as agreed.

2. The Parties recognise the importance of cooperation between their respective national consumer protection agencies, or other relevant bodies, on activities related to electronic commerce in order to enhance consumer trust.

[1] In the case of intermediary services suppliers, identity and contact details also includes the identity and contact details of the actual supplier of the good or the service.

ARTICLE 19.12

Unsolicited direct marketing communications

1. Each Party shall ensure that end-users are effectively protected against unsolicited direct marketing communications.

2. Each Party shall adopt or maintain effective measures regarding unsolicited direct marketing communications that:

(a) require suppliers of unsolicited direct marketing communications to ensure that recipients are able to prevent ongoing reception of those communications; or

(b) require the consent, as specified according to its laws and regulations, of recipients to receive direct marketing communications.

3. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

ARTICLE 19.13

Prohibition of mandatory transfer of or access to source code

1. A Party shall not require the transfer of, or access to, source code of software owned by a natural or juridical person of the other Party. This paragraph does not apply to the voluntary transfer of, or granting of access to, source code on a commercial basis by a person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract. Nothing in this paragraph prevents a person of a Party from licensing its software on a free and open-source basis.

2. For greater certainty, Articles 18.11, 32.1 and 32.2 may apply to measures of a Party adopted or maintained in the context of a certification procedure.

3. Nothing in this Article shall affect:

(a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law;

(b) protection and enforcement of intellectual property rights; or

(c) the right of a Party to take measures in accordance with Article 21.3.

ARTICLE 19.14

Cooperation on regulatory issues with regard to digital trade

1. The Parties shall cooperate by exchanging information on their respective law, as well as on the implementation of that law, related to regulatory issues arising from digital trade, including:

(a) the recognition and facilitation of interoperable cross-border electronic trust and electronic authentication;

(b) the treatment of direct marketing communications;

(c) the protection of consumers online; and

(d) any other regulatory issue relevant for the development of digital trade.

2. The Parties shall maintain a dialogue based on the exchange of information referred to in paragraph 1.

3. This Article does not apply to the rules and measures of a Party for the protection of personal data and privacy, including on cross-border transfer of personal data.

ARTICLE 19.15

Review

On request of either Party, the Sub-Committee on Services and Investment referred to in Article 11.10 shall review the implementation of this Chapter, in particular in light of relevant changes affecting digital trade that might arise from new business models or technologies. The Sub-Committee on Services and Investment shall report its findings and may make any necessary recommendations to the Trade Committee.

# CHAPTER 20

# CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

## ARTICLE 20.1

### Objective and scope

The objective of this Chapter is to enable the free movement of capital and payments related to transactions liberalised under this Agreement[1].

## ARTICLE 20.2

### Current account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, adopted in Bretton Woods, New Hampshire on 22 July 1944, any payments and transfers with regard to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

[1] For greater certainty, this Chapter is subject to Annex 20.

ARTICLE 20.3

Capital movements

Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investment and other transactions as provided for in Chapters 10, 11 and 18.

ARTICLE 20.4

Application of laws and regulations relating to capital movements, payments or transfers

1. Articles 20.2 and 20.3 shall not be construed as preventing a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading or dealing in financial instruments such as securities, futures or derivatives;

(c) financial reporting or record keeping of capital movements, payments or transfers if necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall be applied in an equitable and non-discriminatory manner, and not in a manner that would constitute a disguised restriction on capital movements, payments or transfers.

ARTICLE 20.5

Temporary safeguard measures

In exceptional circumstances of serious difficulties for the operation of the economic and monetary union of the European Union, or a threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months. Those measures shall be limited to the extent that is strictly necessary.

ARTICLE 20.6

Restrictions in case of balance of payments and external financial difficulties

1. If a Party experiences serious balance of payments or external financial difficulties, or a threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers[1].

[1] For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

2. The measures referred to in paragraph 1 of this Article shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) not exceed those necessary to deal with the situation referred to in paragraph 1 of this Article;

(c) be temporary and be phased out progressively as the situation referred to in paragraph 1 of this Article improves;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) be non-discriminatory as compared with third countries in like situations.

3. In the case of trade in goods, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Such measures shall be in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994.

4. In the case of trade in services, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or its balance of payments. Such measures shall be in accordance with Article XII of GATS.

5. A Party that adopts or maintains the measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

6. If restrictive measures are adopted or maintained pursuant to this Article, the Parties shall promptly hold consultations in the Sub-Committee on Services and Investment, unless such consultations are held in other fora of which both Parties are members. The consultations shall assess the balance of payments or external financial difficulties that led to the respective measures, taking into account, *inter alia*, factors such as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

7. The consultations pursuant to paragraph 6 shall address the compliance of the restrictive measures with paragraphs 1 and 2. Those consultations shall be based on all relevant findings of statistical or factual nature presented by the International Monetary Fund ("IMF"), where available, and their conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation of the Party concerned.

CHAPTER 21

PUBLIC PROCUREMENT

ARTICLE 21.1

Definitions

For the purposes of this Chapter and Annexes 21-A and 21-B:

(a) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) "construction service" means a service that has as its objective the realisation, by whatever means, of civil or building works, based on Division 51 of the CPC;

(c) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

(d) "in writing" or "written" means any worded or numbered expression that can be read, reproduced and later communicated; it may include electronically transmitted and stored information;

(e) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(f) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

(g) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for inclusion on that list, and that the procuring entity intends to use more than once;

(h) "notice of intended procurement" means a notice, published by a procuring entity, inviting interested suppliers to submit a request for participation, a tender, or both;

(i) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and a similar action or requirement;

(j) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(k) "procuring entity" means an entity covered under Section A, B or C of Annex 21-A or 21-B;

(l) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(m) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(n) "services" includes construction services, unless otherwise specified;

(o) "standard" means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production 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, service, process or production method;

(p) "supplier" means a person or group of persons that provides or could provide goods or services; and

(q) "technical specification" means a tendering requirement that:

(i) sets out the characteristics of:

(A) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(B) services to be procured, including quality, performance, safety or the processes or methods for their provision; or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 21.2

Scope and coverage

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes:

(a) of a good, a service, or any combination thereof:

(i) as specified in Annex 21-A or 21-B; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;

(b) by any contractual means, including purchase, lease and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 to 8 of this Article, equals or exceeds the relevant threshold specified in Annex 21-A or 21-B at the time of publication of a notice in accordance with Article 21.6;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage pursuant to paragraph 3 of this Article or to Annex 21-A or 21-B.

3. Except where otherwise provided for in Annex 21-A or 21-B, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, subsidies, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance if the applicable procedure or condition would be inconsistent with this Chapter; or

(f) financial services.

4. This Chapter applies to all procurement covered by Annex 21-A or 21-B, in which each Party's commitments are set out as follows:

(a) in Section A of Annexes 21-A and 21-B, the central government entities whose procurement is covered by this Chapter;

(b) in Section B of Annexes 21-A and 21-B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C of Annexes 21-A and 21-B, all other entities whose procurement is covered by this Chapter;

(d) in Section D of Annexes 21-A and 21-B, the goods covered by this Chapter;

(e) in Section E of Annexes 21-A and 21-B, the services, other than construction services, covered by this Chapter;

(f) in Section F of Annexes 21-A and 21-B, the construction services covered by this Chapter;

(g) in Section G of Annexes 21-A and 21-B, public works concessions covered by this Chapter;

(h) in Section H of Annexes 21-A and 21-B, General Notes;

(i) in Section I of Annexes 21-A and 21-B, the media by means of which the Party publishes its procurement notices, award notices, and other information related to its public procurement system as set out in this Chapter;

(j) in Section J of Annex 21-B, the conversion rate to be used for the threshold values.

5. If a procuring entity, in the context of covered procurement, requires persons not covered under Annex 21-A or 21-B to procure in accordance with particular requirements, Article 21.4 shall apply *mutatis mutandis* to such requirements.

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity:

(a) shall not divide a procurement into separate procurements or select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) if the procurement provides for the possibility of options, the total value of such options.

7. If an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts ("recurring contracts") the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts for the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, if possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts for the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in case of a fixed-term contract:

(i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration;

(ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48;

(c) if it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall apply.

ARTICLE 21.3

Security and general exceptions

1. Nothing in this Chapter shall be construed as preventing a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed as preventing a Party from imposing or enforcing measures:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.

3. The Parties understand that subparagraph (b) of paragraph 2 includes environmental measures necessary to protect human, animal or plant life or health.

ARTICLE 21.4

General principles

Non-discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord, immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering goods or services of either Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to its own goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of electronic means

3. The Parties shall ensure that all communication and information exchange for covered procurement are performed using electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software;

(b) establish and maintain mechanisms that ensure the integrity of requests for participation and tenders, including the establishment of the time of receipt and the prevention of inappropriate access; and

(c) use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and, to the widest extent practicable, for the submission of tenders.

Conduct of procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering; and

(b) prevents conflicts of interest and corrupt practices, in accordance with relevant laws.

Rules of origin

5. For the purposes of public procurement covered by this Chapter, a Party shall not apply rules of origin to goods imported from the other Party that are different from the rules of origin which that Party applies in the normal course of trade to imports of the same goods.

Offsets

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset at any stage of a procurement.

Measures not specific to procurement

7. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, to the method of levying such duties and charges, and to other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Anti-corruption measures

8. Each Party shall ensure that it has appropriate measures in place to address and prevent corruption in their public procurement. Such measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the judicial authorities of the Party have determined by final decision, to have engaged in bribery, fraud or other illegal actions in relation to public procurement in the territory of that Party. Each Party shall also ensure that it has in place policies and procedures to eliminate, to the extent possible, or manage any potential conflict of interest on the part of those engaged in or having influence over procurement.

ARTICLE 21.5

Information on the procurement system

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in the relevant electronic or paper media officially designated at national level, which shall be widely disseminated and remain readily accessible to the public; and

(b) provide an explanation thereof to the other Party, upon request.

2. Section I of Annex 21-A and 21-B, respectively, contains a list of:

(a) the electronic or paper media in which the Party concerned publishes the information set out in paragraph 1;

(b) the electronic or paper media in which the Party concerned publishes the notices required by Articles 21.6, 21.8(9) and 21.17(2); and

(c) the website address or addresses where the Party concerned publishes:

(i) its procurement statistics pursuant to Article 21.17(4); or

(ii) its notices concerning awarded contracts pursuant to Article 21.17(5).

3. Each Party shall promptly notify the Sub-Committee referred to in Article 21.21 of any modification to the Party's information listed in Section I of Annex 21-A and 21-B, respectively.

## ARTICLE 21.6

## Notices

Notice of intended procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances set out in Article 21.14.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the timeframe for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction mechanism;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) where, pursuant to Article 21.8(5), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible at the same time as the publication of the notice of intended procurement, and in one of the WTO official languages[1]. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

[1] For greater certainty, WTO official languages are English, Spanish and French.

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of planned procurement

4. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Section B or C of Annex 21-A or 21-B may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 of this Article as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Rules common to notices

6. The notice of intended procurement, summary notice and notice of planned procurement shall be directly accessible by electronic means, free of charge, through a single point of access on the internet. In addition, the notices may also be published in an appropriate paper medium, which shall be widely disseminated and shall remain readily accessible to the public, at least until the expiration of the time period indicated in the notice.

The appropriate paper and electronic medium is listed by each Party in Section I of Annex 21-A and 21-B respectively.

7. Notwithstanding the requirements set out in paragraph 6 regarding the accessibility, by electronic means, free of charge, through a single point of access, of the notices of intended procurement, summary notices and notices of planned procurement, Chile shall, from the date of entry into force of this Agreement and for a transition period of three years until the single point of access is fully operational, establish a gateway site, as a temporary alternative to a single point of access, which should be accessible free of charge and should provide links to the platforms or websites on which the notices are published. The gateway shall contain links to a maximum of four websites, that are:

(a) *Mercado público*;

(b) *Ministerio de Obras Públicas*;

(c) *Dirección General de Concesiones*; and

(d) *Diario Oficial*.

8. The Parties shall provide for a periodical review of paragraph 7 of this Article, including a discussion within the Sub-Committee referred to in Article 21.21, in particular on the status of implementation of the single point of access.

ARTICLE 21.7

Conditions for participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, that supplier has previously been awarded one or more contracts by a procuring entity of a Party;

(b) may require relevant prior experience, where essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party as a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, and provided that this paragraph is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) grave professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 21.8

Qualification of suppliers

Registration systems and qualification procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information. In that event, the Party shall ensure that interested suppliers have access to information on the registration system through electronic means and that they may request registration at any time. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject the request. If the request is rejected, the decision shall be duly motivated.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in those systems.

3. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure for the purpose or with the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective tendering

4. If a procuring entity intends to use selective tendering, it shall:

(a) include in the notice of intended procurement at least the information set out in subparagraphs (a), (b), (f), (g), (j), (k) and (l) of Article 21.6(2) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in subparagraphs (c), (d), (e), (h) and (i) of Article 21.6(2) to the qualified suppliers that it notifies pursuant to subparagraph (b) of Article 21.12(3).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers. An invitation to submit a tender shall be addressed to a number of suppliers that is necessary to ensure competition.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

Multi-use lists

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) if published by electronic means, made available continuously, in the appropriate medium listed in Section I of Annexes 21-A and 21-B.

8. The notice provided for in paragraph 7 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation that the suppliers shall satisfy in order to be included in the list, and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination or, if the period of validity is not provided, an indication of the method by which notice of the termination of use of the list will be given; and

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, if a multi-use list is valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents within the time period provided for in Article 21.12(2), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Entities in Sections B and C of Annex 21-A or 21-B

12. A procuring entity covered under Section B or C of Annex 21-A or 21-B may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 of this Article and includes the information required under paragraph 8 of this Article, as much of the information required under Article 21.6(2) as is available, and a statement that the notice constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides suppliers that have expressed an interest in a given procurement to the entity with sufficient information to permit them to assess their interest in the procurement, including all remaining information required under Article 21.6(2), to the extent that such information is available.

13. A procuring entity covered under Section B or C of Annex 21-A or 21-B may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 of this Article to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on procuring entity decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement, or an application for inclusion on a multi-use list, of the procuring entity's decision with respect to the request or application.

15. If a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## ARTICLE 21.9

### Technical specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or provide for any conformity assessment procedure for the purpose or with the effect of creating unnecessary obstacles to international trade.

2. In providing for the technical specifications for the goods or services being procured, a procuring entity shall, if appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than in terms of design or descriptive characteristics; and

(b) base the technical specification on international standards, if they exist, or on national technical regulations, recognised national standards or building codes, if such international standards do not exist.

3. If design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, if appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not provide for technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

ARTICLE 21.10

Tender documentation

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria that the entity will apply in the awarding of the contract and, unless price is the sole criterion, the relative importance of those criteria;

(d) if the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) if the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, subject to which the auction will be conducted;

(f) if there will be a public opening of tenders, the date, time and place for the opening and, if appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether they are to be submitted on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

2. In establishing a date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account factors such as the complexity of the procurement, the extent of subcontracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

3. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

4. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier within the time period established in each Party's legislation, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

5. If a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or the amended or reissued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or reissuance, if such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time, considering the nature and complexity of the procurement, to allow such suppliers to modify and resubmit modified tenders, as appropriate.

ARTICLE 21.11

Environmental and social considerations

1. A Party may allow its procuring entities to use environmental and social considerations throughout the procurement procedure, provided that they are not discriminatory, are consistent with the prohibition of offsets in Article 21.4(6), and are linked to the subject matter of the contract.

2. For greater certainty, environmental and social considerations shall not be prepared, adopted or applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction of trade between the Parties.

ARTICLE 21.12

Time periods

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account factors such as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) where electronic means are not used, the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points.

Such time periods, including any extensions thereof, shall be the same for all interested or participating suppliers.

2. A procuring entity which uses selective tendering shall establish a final date for the submission of requests for participation that shall not, in principle, be earlier than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders such time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish a final date for the submission of tenders that shall not be earlier than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as set out in Article 21.6(4) at least 40 days, and not more than 12 months, in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under Article 21.6(2) as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will establish the time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The application of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision of this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to no less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, if the procuring entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to no less than 10 days.

8. If a procuring entity covered under Section B or C of Annex 21-A or 21-B has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

ARTICLE 21.13

Negotiation

1. A Party may provide for its procuring entities to conduct negotiations with suppliers in the context of covered procurement:

(a) if the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement as required under Article 21.6(2); or

(b) if it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) if negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 21.14

Limited tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Article 21.6, Article 21.7, Article 21.8, Article 21.10, and Articles 21.12, 21.13, 21.15 and 21.16 under any of the following circumstances:

(a) if:

(i) tenders were not submitted or suppliers did not request participation;

(ii) none of the submitted tenders conforms to the essential requirements of the tender documentation;

(iii) none of the suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been declared collusive by the competent authority provided that the requirements of the tender documentation are not substantially modified;

(b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist, for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection granted by patents, copyrights or other exclusive rights; or

(iii) an absence of competition for technical reasons;

(c) in the case of procurement of additional deliveries by the original supplier of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) where, and in so far as strictly necessary, for reasons of extreme urgency brought about by events which were unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) in the case of goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development; original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) in the case of purchases made under exceptionally advantageous conditions that only arise in the very short term in case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not in the case of routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular with regard to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. The procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions set out in paragraph 1 that justified the use of limited tendering.

ARTICLE 21.15

Electronic auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 21.16

Treatment of tenders and awarding of contracts

Treatment of tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the deadline specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation, and shall be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) the lowest price, if price is the sole criterion.

6. Where a procuring entity receives a tender with a price that is abnormally low in relation to the prices in other tenders submitted, it may verify with the supplier that the supplier satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

8. Each Party shall make best efforts to provide, as a general rule, a standstill period between the award and the conclusion of a contract, in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

## ARTICLE 21.17

## Transparency of procurement information

Information provided to suppliers

1. A procuring entity shall promptly inform participating suppliers of the procuring entity's contract award decisions and, on request of a supplier, shall do so in writing. Subject to Article 21.18(2) and (3) a procuring entity shall, upon request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender, and the relative advantages of the successful supplier's tender.

Publication of award information

2. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Section I of Annex 21-A and 21-B. Where the procuring entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and, in cases where limited tendering was used in accordance with Article 21.14, a description of the circumstances justifying the use of limited tendering.

Maintenance of documentation, reports and electronic traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 21.14; and

(b) data that ensures the appropriate traceability of the conduct of covered procurement by electronic means.

Exchange of statistics

4. On request of the other Party, and with a view to the discussions in the Sub-Committee referred to in Article 21.21, each Party shall make available to the other Party statistics on covered procurement of goods, services and construction services, including, to the maximum extent possible, statistics on works concessions. In accordance with Article 21.23, the Parties shall cooperate to achieve a better understanding of each other's public procurement statistics.

5. If a Party requires notices concerning awarded contracts, pursuant to paragraph 2 of this Article, to be published electronically, and if such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may, instead of reporting to the Sub-Committee referred to in Article 21.21, provide a link to the website, together with any instructions necessary to access and use such data.

ARTICLE 21.18

Disclosure of information

Provision of information to Parties

1. On request of the other Party, a Party shall promptly provide any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. Where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the consent of, the Party that provided the information.

Non-disclosure of information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 21.19

Domestic review procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge the following, arising in the context of a covered procurement in which the supplier has, or has had, an interest:

(a) a breach of this Chapter; or

(b) a failure to comply with a Party's measures implementing this Chapter, where the supplier does not have the right to challenge directly a breach of this Chapter under the laws of a Party.

The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or should have reasonably become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier has the right to appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that the decisions of a review body that is not a court are subject to judicial review or that the review body has procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter, the "participants") have the right to be heard prior to the review body's decision on a challenge;

(c) the participants have the right to be represented and accompanied;

(d) the participants have access to all proceedings;

(e) the participants have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement; such interim measures may result in suspension of the procurement process; the procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied; just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 21.20

Modifications and rectifications to coverage

1. The European Union may modify or rectify Annex 21-A and Chile may modify or rectify Annex 21-B.

Modifications

2. If a Party intends to modify its Annex as referred to in paragraph 1, that Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding subparagraph (b) of paragraph 2 of this Article, a Party does not need to provide compensatory adjustments if the modification covers an entity over which the Party has effectively eliminated its control or influence. Government control or influence over the covered procurement of entities listed in Section A, B or C of Annex 21-A or 21-B is presumed to be effectively eliminated, in so far as the entity's procurement is concerned, where the entity is exposed to competition on markets to which access is not restricted.

4. If a Party notifies the other Party under paragraph 2 of an intended modification of its Annex, the other Party shall object in writing if it disputes that:

(a) an adjustment proposed under subparagraph (b) of paragraph 2 is adequate to maintain a comparable level of mutually agreed coverage; or

(b) the modification covers an entity over which the Party's control or influence has effectively ended in accordance with paragraph 3.

The other Party shall submit any written objection under this paragraph within 45 days of receipt of the notification referred to in subparagraph (a) of paragraph 2 of this Article. If that Party does not submit any written objections within that time period, it shall be deemed to have accepted the adjustment or modification, including for the purposes of Chapter 31.

Rectifications

5. The Parties shall consider the following changes to Annex 21-A or 21-B as a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in this Chapter:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed within Section A, B or C of Annex 21-A or 21-B;

(c) the separation of an entity listed in Section A, B or C of Annex 21-A or 21-B into two or more entities that are all added to the entities listed in the same Section of Annex 21-A or 21-B.

6. If a Party proposes a rectification of Annex 21-A or 21-B respectively, that Party shall notify the other Party every two years following the date of entry into force of this Agreement.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days of receipt of the notification. If a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in this Chapter. If no such objection is submitted in writing within 45 days of receipt of the notification, the Party shall be deemed to have agreed to the proposed rectification.

8. If the other Party objects to the proposed modification or rectification within 45 days, the Parties shall seek to resolve the issue through consultations after having received the notification. If the Parties do not reach an agreement within 60 days of receipt of the objection, the Party seeking to modify or rectify its Annex may refer the matter to dispute settlement procedure under this Agreement. The proposed modification or rectification will take effect only when both Parties have agreed thereto or on the basis of a final decision pursuant to the procedure provided for in Chapter 31.

9. Failure to reach an agreement in the consultation procedure under paragraph 8 of this Article does not exempt the Parties from the obligation to carry out consultations under Chapter 31.

## ARTICLE 21.21

## Sub-Committee on Public Procurement

On request of a Party, the Sub-Committee on Public Procurement ("Sub-Committee") established pursuant to Article 33.4(1), shall meet to address matters related to the implementation and operation of this Chapter, including the following:

(a) issues regarding public procurement that are referred to it by a Party;

(b) monitoring the cooperation activities undertaken by the Parties as provided for in Article 21.23;

(c) facilitation of the participation of small and medium-sized enterprises in covered procurement as provided for in Article 21.22; and

(d) discussion on the status of implementation of the single point of access under Article 21.6(7).

## ARTICLE 21.22

### Facilitation of participation by small and medium-sized enterprises

1. The Parties recognise the important contribution that small and medium-sized enterprises (hereinafter, "SMEs") can make to economic growth and employment, and the importance of facilitating the participation of SMEs in public procurement.

2. The Parties recognise the importance of electronic procurement in facilitating the participation of SMEs in procurement procedures by ensuring transparency.

3. The Parties also recognise the importance of business alliances between suppliers of each Party, and in particular between SMEs, including joint participation in tendering procedures.

4. The Parties may:

(a) provide information related to their measures used in order to contribute, promote, encourage or facilitate SMEs' participation in public procurement;

(b) cooperate in the elaboration of mechanisms to provide information to SMEs about the means for participating in covered procurement under this Chapter.

5. To facilitate participation of SMEs in covered procurement, each Party shall, to the extent possible:

(a) provide a definition of SMEs in an electronic portal;

(b) endeavour to make all tender documentation available free of charge;

(c) take any other measure designed to facilitate the participation of SMEs in public procurement covered by this Chapter, provided that such measures do not discriminate against the other Party's enterprises.

ARTICLE 21.23

Cooperation

1. The Parties shall make best efforts to develop cooperation activities with a view to achieving a better understanding of their respective public procurement systems, as well as better access to their respective markets, in matters such as:

(a) exchanging experiences and information, such as regulatory frameworks, best practices and statistics;

(b) facilitating participation by suppliers in covered procurement, in particular with respect to SMEs;

(c) developing and expanding the use of electronic means in public procurement systems;

(d) building capability by fostering mutual learning between government officials and staff of procuring entities with a view to fulfilling the provisions of this Chapter.

2. The Parties shall inform the Sub-Committee referred to in Article 21.21 of any such activity.

ARTICLE 21.24

Further negotiations

The Sub-Committee on Public Procurement referred to in Article 21.21 shall review the operation of this Chapter and, no later than four years after the date of entry into force of this Agreement, may propose that the Trade Committee recommend that the Parties hold further negotiations with a view to achieving additional market access opening.

# CHAPTER 22

# STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES AND DESIGNATED MONOPOLIES

## ARTICLE 22.1

### Scope

1. The Parties affirm their rights and obligations under paragraphs 1 to 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of GATS.

2. This Chapter applies to a state-owned enterprise, an enterprise granted special rights or privileges and a designated monopoly ("entity") engaged in commercial activities. If an entity engages in both commercial and non-commercial activities[1], only the commercial activities are covered by this Chapter.

3. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, at all levels of government.

[1] Non-commercial activities may include carrying out a legitimate public service mandate or any activity directly related to the provision of national defence or public security.

4. This Chapter does not apply to the procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to the supply of a good or service for commercial sale, whether or not that procurement is a "covered procurement" as defined in Article 21.2.

5. This Chapter does not apply to any service supplied in the exercise of governmental authority.

6. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in cases where in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the entity was less than 100 million Special Drawing Rights (SDRs)[1].

7. Article 22.4 does not apply to services sectors which are outside the scope of this Agreement.

8. Article 22.4 does not apply to the extent that a state-owned enterprise, enterprise granted special rights or privileges or designated monopoly of a Party makes purchases and sales of goods or services pursuant to:

(a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Articles 10.11, 11.8 or 18.10 as set out in its schedule in Annex 10-A; or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors or activities in accordance with Articles 10.11, 11.8 or 18.10 as set out in its schedule in Annex 10-B.

[1] During the first five years from the entry into force of this Agreement, the threshold will be of less than 200 million SDR.

ARTICLE 22.2

Definitions

For the purposes of this Chapter and Annex 22:

(a) "commercial activities" means activities carried out by an enterprise the end result of which is the production of a good or supply of a service to be sold in the relevant market in quantities and at prices determined by the enterprise, and which are undertaken with an orientation towards profit-making[1];

(b) "commercial considerations" means considerations of price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry;

(c) "designate" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(d) "designated monopoly" means an entity, including a group of entities or a government agency, that in a relevant market in the territory of a Party is designated as the sole supplier 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;

[1] For greater certainty, "commercial activities" excludes activities undertaken by an enterprise, which operates on a non-profit basis or which operates on cost recovery basis.

(e) "enterprise granted special rights or privileges"[1] means any enterprise, public or private, that has been granted, in law or in fact, special rights or privileges, by a Party; special rights or privileges are granted by a Party when it designates or limits to two or more the number of enterprises authorised to supply a good or a service, taking into account the specific sectorial regulation under which the granting of the right or privilege has taken place, other than in line with objective, proportionate and non-discriminatory criteria, thereby substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

(f) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in paragraph 3(c) of Article I of GATS, including as defined in the Annex on Financial Services to GATS if applicable; and

(g) "state-owned enterprise" means an enterprise owned or controlled by a Party[2].

ARTICLE 22.3

General provisions

Without prejudice to the rights and obligations of a Party under this Chapter, nothing in this Chapter prevents a Party from establishing or maintaining state-owned enterprises, designating or maintaining monopolies or granting enterprises special rights or privileges.

[1] For greater certainty, the granting of a licence to a limited number of enterprises in allocating a scarce resource in line with objective, proportionate and non-discriminatory criteria is not in and of itself a special right or privilege.

[2] For the establishment of ownership or control, all relevant legal and factual elements shall be examined on a case-by-case basis.

ARTICLE 22.4

Non-discriminatory treatment and commercial considerations

1. A Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (b) or (c) of this paragraph;

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party concerned; and

(ii) accords to a good or service supplied by an enterprise that is a covered enterprise, as defined in subparagraph (d) of Article 10.2(1), in the territory of that Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the territory of that Party that are investments of investors of that Party; and

(c) in its sale of a good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party concerned; and

(ii) accords to an enterprise that is a covered enterprise, as defined in subparagraph (d) of Article 10.2(1), in the territory of that Party treatment no less favourable than it accords to enterprises in the relevant market in the territory of that Party that are investments of investors of that Party.

2. Paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:

(a) purchasing or supplying goods or services on different terms or conditions, including terms or conditions relating to price, provided that such different terms or conditions are established in accordance with commercial considerations; or

(b) refusing to purchase or supply goods or services, provided that such refusal is undertaken in accordance with commercial considerations.

ARTICLE 22.5

Regulatory framework

1. The Parties shall make best use of international standards, as applicable, including the OECD Guidelines on Corporate Governance of State-Owned Enterprises, as appropriate.

2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that it establishes or maintains:

(a) is independent from, and not accountable to, any of the enterprises that it regulates, in order to ensure the effectiveness of the regulatory function; and

(b) acts, in like circumstances, impartially[1] in respect of all enterprises that it regulates, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies[2].

3. Each Party shall apply its laws and regulations to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in a consistent and non-discriminatory manner.

ARTICLE 22.6

Transparency

1. A Party ("the requesting Party") which has reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly of the other Party may request that other Party ("the requested Party") to supply in writing information on that entity's commercial activities relating to the implementation of this Chapter.

2. The requesting Party shall include, in a request pursuant to paragraph 1, an explanation as to how that Party believes that the activities of the entity may be affecting the interests of that Party under this Chapter and shall specify which information listed in paragraph 3 it requests.

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1 For greater certainty, the impartiality with which the regulatory body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body.

2 For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body in other Chapters of this Agreement, the relevant provisions in those other Chapters shall prevail.

3. The requested Party shall provide the following information, in accordance with paragraphs 1 and 2:

(a) the ownership and the voting structures of the entity, indicating the percentage of shares that the Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the entity;

(b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, if such rights are different from those attached to the general common shares of the entity;

(c) the organisational structure of the entity and the composition of its board of directors or of an equivalent body;

(d) a description of which government departments or public bodies regulate or monitor the entity, a description of the reporting requirements imposed on it by those government departments or public bodies, and the rights and practices of those government departments or any public bodies in respect of the appointment, dismissal or remuneration of senior executives and members of its board of directors or any other equivalent management body;

(e) the annual revenue of the entity and total assets over the most recent three-year period for which information is available;

(f) any exemptions, immunities and related measures from which the entity benefits under the laws and regulations of the requested Party; and

(g) any additional information regarding the entity that is publicly available, including annual financial reports and third party audits.

4. Paragraphs 1, 2 and 3 do not require any Party to disclose confidential information the disclosure of which would be inconsistent with its laws and regulations, impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

5. If the requested information is not available to the requested Party, that Party shall provide the requesting Party with the reasons therefor, in writing.

## ARTICLE 22.7

## Party-specific Annex

1. Article 22.4 does not apply in respect of the non-conforming activities of state-owned enterprises or designated monopolies that a Party lists in its schedule in Annex 22 in accordance with the terms of the schedule of the Party.

2. On request of either Party, the Trade Council may adopt a decision to amend Annex 22 pursuant to subparagraph (a) of Article 33.1(6) and shall in any event consider amendments to Annex 22 within five years of the date of entry into force of this Agreement.

# CHAPTER 23

# COMPETITION POLICY

## ARTICLE 23.1

### Principles

The Parties recognise the importance of free and undistorted competition in trade and investment. The Parties acknowledge that anti-competitive practices have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

## ARTICLE 23.2

### Regulatory framework

1. Each Party shall maintain or adopt competition law which applies to all sectors of the economy[1] and addresses the following practices in an effective manner:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

[1] For greater certainty, competition law in the European Union applies to the agricultural sector in accordance with Regulation (EU) No1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ EU L 347, 20.12.2013, p. 671).

(b) abuses by one or more enterprises of a dominant position; and

(c) mergers between enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. Each Party shall ensure that all enterprises, private or public, are subject to the competition law referred to in paragraph 1.

3. The application of the competition law of each Party should not obstruct the performance, in law or in fact, of any particular task of public interest assigned to the enterprises concerned. Exemptions from the competition law of a Party should be limited to tasks of public interest, limited to what is strictly necessary to achieve the desired public policy objective, and transparent.

ARTICLE 23.3

Implementation

1. Each Party shall maintain a functionally independent authority responsible for, and appropriately equipped with the powers and resources necessary for the full application and the effective enforcement of, the competition law referred to in Article 23.2.

2. Each Party shall apply its competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and right of defence of the enterprises concerned, irrespective of their nationality or ownership.

ARTICLE 23.4

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation on matters related to their competition policy and the enforcement thereof.

2. To facilitate cooperation, the competition authorities of the Parties may exchange information, subject to the confidentiality rules provided for in their respective laws and regulations.

3. The competition authorities of the Parties shall endeavour to coordinate, to the extent possible and if appropriate, their enforcement activities in the same or related conduct or cases.

ARTICLE 23.5

Consultations

1. To foster mutual understanding between the Parties, or to address specific matters on the interpretation or application of this Chapter, the Parties shall, on request of either Party, promptly enter into consultations on any matter concerning the interpretation or application of this Chapter[1]. The Party requesting consultations shall indicate, if relevant, how the matter affects trade or investment between the Parties.

[1] For the European Union, the interlocutor is DG Competition of the European Commission.

2. To facilitate the consultations referred to in paragraph 1, each Party shall endeavour to provide relevant non-confidential information to the other Party.

ARTICLE 23.6

Non-application of dispute settlement

Chapter 31 does not apply to this Chapter.

# CHAPTER 24

# SUBSIDIES

## ARTICLE 24.1

### Principles

The Parties recognise that subsidies may be granted if they are necessary to achieve public policy objectives. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation and competition. Therefore, in principle, a Party shall not grant subsidies if they negatively affect, or are likely to negatively affect, trade or competition between the Parties.

## ARTICLE 24.2

### Definition and scope

1. For the purposes of this Chapter, a "subsidy" means a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether it is granted to an enterprise supplying goods or to an enterprise supplying services[1].

[1] For greater certainty, this Article does not prejudice the outcome of future discussions in the WTO or related plurilateral fora on the definition of subsidies for services.

2. This Chapter applies to subsidies which are specific in accordance with Article 2 of the SCM Agreement.

3. This Chapter applies to subsidies to any enterprise, including private and public enterprises.

4. Each Party shall ensure that subsidies to enterprises entrusted with the operation of services of general economic interest are subject to the rules set out in this Chapter, in so far as the application of those rules does not obstruct the performance, in law or in fact, of the particular tasks that are assigned to those enterprises. Assigned tasks shall be transparent, and any limitation to or deviation from the application of the rules set out in this Chapter shall not go beyond what is necessary to perform the assigned tasks.

5. Article 24.5 does not apply to subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture.

6. Articles 24.5 and 24.6 do not apply to the audio-visual sector.

7. Articles 24.5 and 24.6 do not apply to subsidies granted to assist indigenous people and their communities in their economic development[1]. Such subsidies shall be targeted, proportionate and transparent.

8. Articles 24.5 and 24.6 do not apply to subsidies granted to remedy the damage caused by natural disasters or other exceptional occurrences.

[1] For the purposes of this paragraph, indigenous people and their communities shall be understood as those defined in the law of each Party. For the European Union, its law encompasses both European Union law and the law of each of its Member States.

9. Article 24.5 does not apply to subsidies that are granted on a temporary basis to respond to an economic emergency[1]. Such subsidies shall be proportionate and targeted to remedy that economic emergency.

10. The Trade Council may adopt a decision amending the definition of "subsidy" in paragraph 1 of this Article in so far as it relates to enterprises supplying services, with a view to incorporating the outcome of future discussions in the WTO or related plurilateral fora on that matter, pursuant to subparagraph (a) of Article 33.1(6).

ARTICLE 24.3

Relation to the WTO Agreement

This Chapter applies without prejudice to the rights and obligations of a Party under Article XV of GATS, Article XVI of GATT 1994, the SCM Agreement and the Agreement on Agriculture.

[1] "Economic emergency" shall be understood as an economic event that causes a serious disturbance in the economy of a Party. For the European Union, "the economy of a Party" shall be understood as the economy of the European Union or of one or more of its Member States.

ARTICLE 24.4

Transparency

1. With respect to a subsidy granted or maintained within its territory, each Party shall make available the following information:

(a) the legal basis and purpose of the subsidy;

(b) the form of the subsidy;

(c) the amount of the subsidy or the amount budgeted for the subsidy; and

(d) if possible, the name of the recipient of the subsidy.

2. A Party shall meet the requirements set out in paragraph 1 of this Article by means of:

(a) notification pursuant to Article 25 of the SCM Agreement, provided that the notification contains all the information referred to in paragraph 1 of this Article and is provided at least every two years;

(b) notification pursuant to Article 18 of the Agreement on Agriculture; or

(c) publication by the Party or on its behalf on a publicly accessible website, by 31 December of the calendar year following the year in which the subsidy was granted or maintained.

ARTICLE 24.5

Consultations

1. If a Party considers that a subsidy granted by the other Party has or could have a negative effect on its trade interests or on competition, that Party (the "requesting Party") may express its concern in writing to the other Party (the "responding Party") and request consultations on the matter. Such a request shall include an explanation of how the subsidy has or could have a negative effect on the trade interests of the requesting Party or on competition.

2. For the purposes of paragraph 1, the requesting Party may request from the responding Party the following information about the subsidy:

(a) the legal basis and policy objective or purpose of the subsidy;

(b) the form of the subsidy;

(c) the dates and duration of the subsidy and any other time limits attached to it;

(d) the eligibility requirements of the subsidy;

(e) the total amount or the annual amount budgeted for the subsidy;

(f) if possible, the name of the recipient of the subsidy; and

(g) any other information permitting an assessment of the negative effect of the subsidy.

3. The responding Party shall provide the information requested pursuant to paragraph 2 in writing no later than 60 days after the date of receipt of the request.

4. If the responding Party does not provide, in whole or in part, the information requested pursuant to paragraphs 2 and 3, the responding Party shall explain the reasons therefor in writing.

5. If, after having received the requested information and following the consultations, the requesting Party considers that the subsidy concerned has or may have a significant negative effect on its trade interests or competition, the responding Party shall use its best endeavours to eliminate or minimise that effect.

ARTICLE 24.6

Subsidies subject to conditions

1. When granting the following subsidies, each Party shall apply the following conditions:

(a) in respect of subsidies whereby a government, directly or indirectly, is responsible for guaranteeing debts or liabilities of certain enterprises, that the coverage of the debts or liabilities is not unlimited with regard to the amount of those debts or liabilities or that the duration of the government's responsibility is not unlimited; and

(b) in respect of subsidies to insolvent or ailing enterprises such as loans and guarantees, cash grants, capital injections, provision of assets below market prices and tax exemptions with a duration of more than one year, that a credible restructuring plan has been prepared which is based on realistic assumptions with a view to ensuring the return of the insolvent or ailing enterprises, within a reasonable time, to long-term viability and that the enterprise, with the exception of small and medium-sized enterprises, itself contributes to the costs of restructuring.

2. Subparagraph (b) of paragraph 1 does not apply to subsidies granted to enterprises as a temporary liquidity support in the form of loan guarantees or loans limited to the amount needed merely to keep an ailing company in business for the time necessary to adopt a restructuring or liquidation plan.

3. This Article applies only to subsidies that negatively affect trade and competition of the other Party or are likely to do so.

4. This Article does not apply to subsidies:

(a) which are granted to ensure the orderly market exit of a company; or

(b) the cumulative amounts or budgets of which are less than 170 000 SDR per enterprise over a period of three consecutive years.

ARTICLE 24.7

Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the explicitly defined policy objective for which those subsidies were granted[1].

ARTICLE 24.8

Non-application of dispute settlement

Chapter 31 does not apply to Article 24.5(5).

ARTICLE 24.9

Confidentiality

1. When exchanging information under this Chapter, the Parties shall take into account the limitations imposed by their respective law concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.

2. If a Party communicates information under this Chapter, the receiving Party shall maintain the confidentiality of that information.

[1] For greater certainty, when a Party has set up the appropriate legislative frameworks and administrative procedures to this effect, the obligation is considered to be fulfilled.

# CHAPTER 25

# INTELLECTUAL PROPERTY

## SECTION A

## GENERAL PROVISIONS

### ARTICLE 25.1

### Objectives

1. The objectives of this Chapter are to:

(a) facilitate the production and commercialisation of innovative and creative goods and services between the Parties, contributing to a more sustainable and inclusive economy for the Parties;

(b) facilitate and govern trade between the Parties, as well as reduce distortions and impediments to such trade; and

(c) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

2. The objectives set out in Article 7 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 25.2

Scope

1. Each Party shall comply with its commitments under the international treaties in the field of intellectual property to which it is a party, including the TRIPS Agreement.

2. This Chapter shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property.

3. Nothing in this Chapter prevents a Party from applying provisions of its law introducing higher standards for the protection and enforcement of intellectual property rights, provided that those provisions are compatible with this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

ARTICLE 25.3

Principles

1. The principles set out in Article 8 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

2. Taking into consideration the underlying public policy objectives of domestic systems, the Parties recognise the need to do the following through their respective intellectual property systems, while respecting the principles of transparency, taking into account the interests of relevant stakeholders, including right holders, users and the general public:

(a) promote innovation and creativity; and

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts.

ARTICLE 25.4

Definitions

For the purposes of this Chapter and Annexes 25-A, 25-B and 25-C:

(a) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886, and as amended on 28 September 1979;

(b) "intellectual property" means all categories of intellectual property rights that are covered by Sub-Sections 1 to 7 of Section B of this Chapter or Sections 1 to 7 of Part II of the TRIPS Agreement; the protection of intellectual property includes protection against unfair competition pursuant to Article 10*bis* of the Paris Convention;

(c) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, of 20 March 1883, as last revised at Stockholm on 14 July 1967 and as amended on 28 September 1979;

(d) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961; and

(e) "WIPO" means the World Intellectual Property Organization.

ARTICLE 25.5

National treatment

1. In respect of all categories of intellectual property rights covered by this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[1] of intellectual property rights, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989 and the WIPO Performances and Phonograms Treaty ("WPPT"), done at Geneva on 20 December 1996. In respect of performers, producers of phonograms and broadcasting organisations, that obligation only applies in respect of the rights provided for under this Chapter.

[1] For the purposes of this paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter. Further, for the purposes of this paragraph, "protection" also includes measures to prevent the circumvention of effective technological measures and measures concerning rights management information.

2. A Party may avail itself of the exceptions permitted under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such exception is:

(a) necessary to secure compliance with the laws or regulations of the Party concerned that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 25.6

Intellectual property and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO (the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.

2. Each Party shall implement Article 31*bis* of the TRIPS Agreement, as well as the Annex and the Appendix to that Annex, which entered into force on 23 January 2017.

ARTICLE 25.7

Exhaustion

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 25.8

International agreements

1. Each Party affirms their commitment to and shall comply with:

(a) the Berne Convention;

(b) the Rome Convention;

(c) the WIPO Copyright Treaty ("WCT"), done at Geneva on 20 December 1996;

(d) the WPPT; and

(e) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled, done in Marrakesh on 27 June 2013.

2. Each Party shall make all reasonable efforts to ratify or accede to the Beijing Treaty on Audiovisual Performances, adopted in Beijing on 24 June 2012.

ARTICLE 25.9

Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

(a) direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public by sale or otherwise of the original of their works or copies thereof;

(c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies of their computer programs or cinematographic works.

ARTICLE 25.10

Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

(a) the fixation[1] of their performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of the fixations of their performances;

(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

[1] "Fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

ARTICLE 25.11

Producers of phonograms

Each Party shall provide phonogram producers with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or other transfer of ownership, of their phonograms, including copies thereof;

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

ARTICLE 25.12

Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts transmitted by wireless means;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts transmitted by wireless means; and

(c) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public[1] of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE 25.13

Broadcasting and communication to the public
of phonograms published for commercial purposes[2]

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or communication to the public[3].

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1 For greater certainty, nothing in this paragraph prevents a Party from determining the conditions under which this right may be exercised, in accordance with Article 13(d) of the Rome Convention.

2 Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

3 For the purposes of this Article, "communication to the public" does not include the making available to the public of a phonogram, by wire or wireless means, in such a way that members of the public may access the phonogram from a place and at a time individually chosen by them.

2. Each Party shall ensure that the single equitable remuneration referred to in paragraph 1 is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share such single equitable remuneration.

ARTICLE 25.14

Term of protection

1. The rights of an author of a work shall run for the life of the author and for no less than 70 years after the death of the author, irrespective of the date when the work is lawfully made available to the public[1].

2. In the case of a work of joint authorship, the term of protection provided for in paragraph 1 shall be calculated from the death of the last surviving author.

3. In the case of anonymous or pseudonymous works, the term of protection shall run for no less than 70 years after the work is lawfully made available to the public. However, if the pseudonym adopted by the author leaves no doubt as to the identity of the author, or if the author discloses their identity during the period referred to in this paragraph, the term of protection applicable shall be that provided for in paragraph 1.

[1] If a Party provides a special term of protection in cases in which a juridical person is designated as the right holder, the term of protection shall run for not less than 70 years after the work is lawfully made available to the public.

4. The term of protection of cinematographic or audiovisual works shall expire no less than 70 years after the date of death of the last surviving author. It shall be a matter for the laws and regulations of the Parties to determine the persons that are to be considered authors of a cinematographic or audiovisual work.

5. The rights of broadcasting organisations shall expire 50 years after the date of the first transmission of a broadcast.

6. The rights of performers shall expire no less than 50 years after the date of the fixation of the performance; however:

(a) if a fixation of the performance is lawfully published or, where provided for by a Party, lawfully communicated to the public within the period of 50 years referred to in this paragraph, the term of protection shall be calculated from the date of the first such publication or, where provided for by a Party, the first such communication to the public; where a Party provides for both possibilities, the term of protection shall be calculated from whichever event occurs earlier; and

(b) if a fixation of the performance in a phonogram is lawfully published or, where provided for by a Party, lawfully communicated to the public within the period of 50 years referred to in this paragraph, the term of protection shall expire no less than 70 years after the date of the first such publication or, where provided for by a Party, the first such communication to the public; where a Party provides for both possibilities, the term of protection shall be calculated from whichever event occurs earlier.

7. The rights of producers of phonograms shall expire no less than 50 years after the fixation is made. However, if the phonogram is lawfully published or, where provided for by a Party, lawfully communicated to the public within that period, such rights shall expire no less than 70 years after the date of the first such publication or, where provided for by a Party, the first such communication to the public. The Parties may adopt or maintain effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

## ARTICLE 25.15

## Resale right

1. Each Party shall provide for, for the benefit of the author of an original work of graphic or plastic art, a "resale right", to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained, for any resale of the work, subsequent to the first transfer of the work by the author[1].

2. The resale right referred to in paragraph 1 shall apply to all acts of resale involving art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art, as sellers, buyers or intermediaries.

[1] Notwithstanding this Article, for Chile the first paragraph of Article 36 of Law No 17.366 of 28 August 1970, as amended by Law No 21.045 of 13 October 2017 may continue to apply with respect to the calculation of royalties.

3. Each Party may provide that the resale right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

ARTICLE 25.16

Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purposes of fostering the availability of works and other protected subject matter in the territories of the Parties, and of the transfer of rights revenue between their respective collective management organisations for the use of such works or other protected subject matter.

2. The Parties shall promote transparency of collective management organisations, in particular regarding rights revenue they collect, deductions they apply to rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Each Party shall ensure that collective management organisations established in its territory that represent another collective management organisation established in the territory of the other Party through a representation agreement are encouraged to accurately, regularly and diligently pay amounts owed to the represented collective management organisation as well as to provide the represented collective management organisation with information on the amount of rights revenue collected on its behalf and on any deductions made to that rights revenue.

ARTICLE 25.17

Limitations and exceptions

Each Party shall provide for limitations or exceptions to the rights set out in Articles 25.9 to 25.13 only in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right holders.

ARTICLE 25.18

Protection of technological measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measure, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that the person is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

(a) are promoted, advertised or marketed for the purpose of circumventing any effective technological measures;

(b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. For the purposes of this Sub-Section, "technological measure" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter[1], which are not authorised by the right holder of any copyright or related right as provided for by the law of a Party. Technological measures shall be deemed to be effective if the use of a protected work or other subject matter is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter, or of a copy control mechanism which achieves the protection objective.

4. Notwithstanding the legal protection provided for in paragraph 1 of this Article, in the absence of voluntary measures taken by the right holders, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 25.17 from enjoying such exceptions or limitations.

[1] For greater certainty, "works or other subject matter" does not apply to works or other subject matter for which the term of protection has expired.

ARTICLE 25.19

Obligations concerning rights-management information

1. Each Party shall provide adequate legal protection against any person knowingly performing, without authority, any of the following acts, if such person knows, or has reasonable grounds to know, that by so doing that person is inducing, enabling, facilitating or concealing an infringement of any copyright or related rights as provided for in the law of that Party:

(a) the removal or alteration of any electronic rights-management information; and

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Sub-Section from which electronic rights-management information has been removed or altered without authority.

2. For the purposes of this Article, "rights-management information" means any information provided by right holders which identifies the work or other subject matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

3. Paragraph 2 applies if any of the items of information referred to in that paragraph is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Article.

SUB-SECTION 2

TRADEMARKS

ARTICLE 25.20

International agreements

Each Party shall:

(a) comply with the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as amended on 12 November 2007;

(b) comply with the Trademark Law Treaty, done at Geneva on 27 October 1994, and with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of 15 June 1957, as amended on 28 September 1979; and

(c) make all reasonable efforts to accede to the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006.

ARTICLE 25.21

Rights conferred by a trademark

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using, in the course of trade, signs identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In the event of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

ARTICLE 25.22

Registration procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration, including a partial refusal of registration, shall be duly reasoned and communicated in writing to the relevant party.

2. Each Party shall provide for the possibility for third parties to oppose trademark applications or, where appropriate under its law, trademark registrations. Such opposition proceedings shall be adversarial.

3. Each Party shall provide for a publicly available electronic database of trademark applications and trademark registrations.

ARTICLE 25.23

Well-known trademarks

For the purposes of giving effect to the protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, the Parties affirm the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 25.24

Exceptions to the rights conferred by a trademark

1. Each Party:

(a) shall provide for the fair use of descriptive terms as a limited exception to the rights conferred by trademarks; and

(b) may provide for other limited exceptions.

2. Paragraph 1 applies provided that the exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

3. The trademark shall not entitle the proprietor to prohibit a third party from using the following, in the course of trade:

(a) their own name or address;

(b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or

(c) the trademark, where it is necessary to indicate the intended purpose of a good or service, in particular as accessories or spare parts.

4. Paragraph 3 applies where the use made by the third party is in accordance with honest practices in industrial or commercial matters[1].

5. A Party may provide that the trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality, if that right is recognised by the law of that Party and is used within the limits of the territory in which it is recognised.

[1] Alternatively, a Party may make such use subject to it not being misleading or creating confusion among the relevant part of the public.

ARTICLE 25.25

Grounds for revocation

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of five years, it has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, a Party may provide that no person shall claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trademark has started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation, which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded if preparations for the commencement or resumption occurred only after the proprietor becomes aware that the application for revocation may be filed.

2. A trademark shall also be liable to revocation if, after the date on which it was registered as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered[1].

[1] A trademark may also be liable to revocation if, after the date on which it was registered, as a consequence of the use made of it by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

ARTICLE 25.26

Bad faith applications

A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

SUB-SECTION 3

DESIGNS[1]

ARTICLE 25.27

International agreements

Each Party shall make all reasonable efforts to accede to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

[1] References in this Chapter to designs shall be read as references to registered industrial designs.

ARTICLE 25.28

Protection of registered designs[1]

1. Each Party shall provide for the protection of independently created designs that are new or original[2]. That protection shall be provided by registration and shall confer an exclusive right upon its holder in accordance with the provisions of this Article.

2. A holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, selling, importing, exporting the product bearing and embodying the protected design or using articles bearing or embodying the protected design, where such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new or original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the complex product, and

[1] The Union also grants protection to the unregistered design when it meets the requirements of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ EC L 3, 5.1.2002, p. 1).

[2] A Party may provide in its laws that individual character of designs can also be required. The European Union considers that a design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public.

(b) to the extent that visible features of the component part referred to in subparagraph (a) fulfil in themselves the requirement of novelty or originality.

4. For the purposes of subparagraph (a) of paragraph 3, "normal use" means the use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 25.29

Duration of protection

The duration of protection available shall amount to at least 15 years from the date of filing of the application.

ARTICLE 25.30

Exceptions and exclusions

1. Each Party may provide for limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the holder of the protected design, taking account of the legitimate interests of third parties.

2. Design protection shall not extend to designs that are dictated essentially by technical or functional considerations.

3. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to, or placed in, around or against, another product so that either product can perform its own function.

4. By way of derogation from paragraph 3, a design may subsist in a design which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 25.31

Relationship to copyright

A design shall also be eligible for protection under the copyright law of a Party as from the date on which the design was created or fixed in any form. Each Party shall determine the extent to which, and the conditions under which, such a protection is conferred, including the level of originality required.

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 25.32

Definition and scope

1. For the purposes of this Agreement, "geographical indication" means an indication which identifies a good as originating in the territory of a Party, or a region or locality in its territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. This Sub-Section applies to geographical indications, which identify the products listed in Annex 25-C.

3. The Parties agree to consider, after the entry into force of this Agreement, extend the scope of geographical indications covered by this Sub-Section to other product types of geographical indications not covered by paragraph 2, and in particular handicrafts, by taking into account the legislative developments of the Parties.

4. A Party shall protect geographical indications of the other Party, in accordance with this Sub-Section, provided that those geographical indications are protected as such in the country of origin.

ARTICLE 25.33

Listed geographical indications

Each Party, having examined both the legislation of the other Party referred to in Annex 25-A and the geographical indications of the other Party listed in Annex 25-C, and having completed proper publicity measures, in accordance with its laws and practices, shall protect the geographical indications of the other Party listed in Annex 25-C, in accordance with the level of protection laid down in this Sub-Section.

ARTICLE 25.34

Amendment of the list of geographical indications

1. The Parties agree on the possibility to amend the list of geographical indications in Annex 25-C pursuant to Article 25.40(1). Any addition by a Party to its list of geographical indications in Annex 25-C shall not exceed 45 geographical indications every three years after the date of entry into force of this Agreement. The Parties shall add new geographical indications after the completion of the opposition procedure in accordance with the criteria set out in Annex 25-B and after having examined the geographical indications, to the satisfaction of both Parties.

2. When an amendment of the list of geographical indications in Annex 25-C concerns a minor change related to the spelling of a listed geographical indication or the reference to the denomination of the geographical area to which it is attributable, the procedure referred to in Article 25.40(4) applies.

3. Any addition or change of a geographical indication pursuant to paragraph 1 or 2 shall be made by mutual consent of the Parties.

ARTICLE 25.35

Scope of protection of geographical indications

1. The geographical indications listed in Annex 25-C, as well as those added pursuant to Article 25.34, shall be protected against:

(a) any commercial use of the geographical indication, for a product which is the same type of product and which:

(i) does not originate in the place of origin specified in Annex 25-C for that geographical indication; or

(ii) originates in the place of origin specified in Annex 25-C for that geographical indication, but which was not produced or manufactured in accordance with the product specification of the protected name, even where the name is accompanied by terms such as "kind", "type", "style", "imitation", "flavour", or other similar expressions;

(b) the use of any means in the designation or presentation of a product that indicates or suggests that the product in question originates in a geographical area other than the true place of origin in a manner which risks misleading the public as to the geographical origin of the product;

(c) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention, including the exploitation of the reputation of a geographical indication or any false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material, or the documents related to the goods themselves, and any practice liable to mislead the consumer as to the true origin of the product.

2. Protected geographical indications shall not become generic in the territories of the Parties.

3. There shall be no obligation under this Sub-Section to protect geographical indications which are not, or cease to be, protected in their territory of origin.

4. A Party shall not preclude the possibility that the protection or recognition of a geographical indication may be cancelled by the competent authorities in the territory of its origin on the basis that the protected or recognised term has ceased to meet the conditions on which the protection or recognition was originally granted in its territory of origin.

5. Each Party shall notify the other Party if a geographical indication ceases to be protected in its territory of origin. Such notification shall take place in accordance with the procedures laid down in Article 25.40.

6. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except if such name is used with the purpose of misleading the public.

7. The protection provided for under this Sub-Section shall apply to the translation of the geographical indications listed in Annex 25-C, if the use of such translation risks misleading the public.

8. If a translation of a geographical indication is identical to, or contains, generic or descriptive terms, including nouns and adjectives, or terms that are customarily used in common language as the common name for a product in the territory of a Party, or if a geographical indication is not identical to but contains such a term, the provisions of this Sub-Section shall not prejudice the right of any person to use that term in association with that product.

9. The protection provided for under this Sub-Section does not apply to an individual component of a multicomponent term that is protected as a geographical indication listed in Appendix 25-C-1, if the individual component[1] is a term that is customarily used in common language as the common name for the associated product.

10. Nothing in this Sub-Section shall prevent the use, in the territory of a Party, with respect to any product, of a name of a plant variety or an animal breed[2].

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1 As set out in Appendix 25-C-1, which contains terms for which protection is not sought.

2 Explanatory notes in Annex 25-C define the plants varieties and animal breeds the use of which shall not be prevented.

11. For new geographical indications that a Party intends to add in accordance with Article 25.34, nothing shall require a Party to protect a geographical indication which is identical to the term that is customarily used in common language as the common name for the associated product in the territory of that Party[1].

ARTICLE 25.36

Right of use of geographical indications

1. A name protected under this Sub-Section as a geographical indication may be used by any operator marketing a product which conforms to the corresponding specification.

2. A name protected under this Sub-Section as a geographical indication shall not be subject to any registration of users, or further charges.

[1] When a Party, in determining whether to add a new geographical indication, determines whether a term is the term customary in common language as the common name for the relevant good in its territory, a Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include: (a) whether the term is used to refer to the type of product in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; or (b) how the product referenced by the term is marketed and used in trade in the territory of that Party.

ARTICLE 25.37

Relation between trademarks and geographical indications

1. The Parties shall refuse to register a trademark the use of which would breach Article 25.35 and which relates to the same type of product as the geographical indication, provided that the application to register such a trademark is submitted after the date of application for protection of the geographical indication in the territory of the Party concerned.

2. Trademarks registered in breach of paragraph 1 shall be invalidated, *ex officio* or on request of an interested party, in accordance with the law and practice of the Parties.

3. For the geographical indications referred to in Article 25.33, the date of submission of the application for protection referred to in paragraphs 1 and 2 shall be 1 November 2022.

4. For geographical indications added to Annex 25-C in accordance with Article 25.34, the date of submission of the application for protection shall be the date of the transmission of a request to the other Party to protect a geographical indication subject to the successful conclusion of the process to amend the list of protected geographical indications referred to in Article 25.34.

5. The Parties shall protect geographical indications also if a prior trademark exists. A prior trademark registered in good faith may be renewed and may be subject to variations that require the filing of a new trademark application, provided that those variations do not undermine the protection of geographical indications and that there are no grounds for invalidation of the trademark under the law of the Parties.

6. For the purposes of paragraph 5 of this Article, a "prior trademark" means a trademark the use of which breaches Article 25.35, for which an application for registration has been made or which has been established by use if that possibility is provided for by the legislation concerned, in good faith in the territory of a Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

ARTICLE 25.38

Enforcement of protection

Each Party shall enforce the protection provided for in Articles 25.35, 25.36 and 25.37 by administrative action on request of an interested party. Each Party shall provide, within its law and practice, for additional administrative and judicial steps to prevent or stop the unlawful use of protected geographical indications.

ARTICLE 25.39

General rules

1. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name conflicts with the name of a plant variety or an animal breed and, as a result, is likely to mislead the consumer as to the true origin of the product.

2. If geographical indications of the Parties are homonymous, protection shall be granted by a Party to each geographical indication of the other Party, provided that there is sufficient distinction in practice between conditions of usage and presentation of the names so as to not mislead the consumer.

3. If a Party, in the context of bilateral negotiations with a third country, proposes to protect a geographical indication of that third country which is homonymous with a geographical indication of the other Party, it shall inform the other Party, which shall be given the opportunity to comment before that geographical indication is protected.

4. Import, export and marketing of products corresponding to the geographical indications listed in Annex 25-C shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market.

5. Any matter arising from product specifications of protected geographical indications shall be dealt with in the Sub-Committee referred to in Article 25.40.

6. The geographical indications protected under this Sub-Section may only be cancelled by the Party in which the product originates. A Party shall notify the other Party if a geographical indication listed in Annex 25-C ceases to be protected in its territory. Following such notification, Annex 25-C shall be amended pursuant to Article 25.40(3).

7. A product specification referred to in this Sub-Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory in which the product originates.

ARTICLE 25.40

Sub-Committee, co-operation and transparency

1. For the purposes of this Sub-Section, the Sub-Committee referred to in Article 25.66 may recommend to the Trade Council to amend, pursuant to subparagraph (a) of Article 33.1(6):

(a) Annex 25-A as regards the references to the law applicable in the Parties;

(b) Annex 25-B as regards the criteria to be included in the opposition procedure; and

(c) Annex 25-C as regards the geographical indications.

2. For the purposes of this Sub-Section, the Sub-Committee referred to in Article 25.66 shall be responsible for exchanging information on:

(a) legislative and policy developments on geographical indications;

(b) geographical indications for the purpose of considering their protection in accordance with this Sub-Section; and

(c) any other matter of mutual interest in the area of geographical indications.

3. Following the notification referred to in Article 25.39(6), the Sub-Committee shall recommend that the Trade Council amend Annex 25-C in accordance with subparagraph (c) of paragraph 1 of this Article to end the protection under this Agreement.

4. In the case of a minor change related to the spelling of a listed geographical indication or the reference to the denomination of the geographical area to which it is attributable, a Party shall notify the other Party in the Sub-Committee of such change together with an explanation therefor. The Sub-Committee shall recommend that the Trade Council amend Annex 25-C, pursuant to subparagraph (a) of Article 33.1(6), with such minor change.

5. The Parties shall, directly or through the Sub-Committee, remain in contact on all matters relating to the implementation and the functioning of this Sub-Section. In particular, a Party may request from the other Party information relating to product specifications and their amendments, as well as to contact points for administrative enforcement.

6. The Parties may make publicly available the product specifications, or a summary thereof, and contact points for administrative enforcement corresponding to the geographical indications of the other Party protected pursuant to this Sub-Section.

ARTICLE 25.41

Other protection

1. This Sub-Section applies without prejudice to the rights and obligations of the Parties in accordance with the WTO Agreement, or any other multilateral agreement on intellectual property law to which the European Union and Chile are parties.

2. This Sub-Section is without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of the Parties.

SUB-SECTION 5

PATENTS

ARTICLE 25.42

International agreements

Each Party[1] shall comply with the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979, last modified on 3 October 2001.

ARTICLE 25.43

Supplementary protection in case of delays in marketing approval for pharmaceutical products

1. The Parties recognise that pharmaceutical products protected by a patent in their respective territory may be subject to a marketing approval or sanitary permit procedure before being put on the market.

[1] For the European Union, the obligation under this Article is fulfilled by the Member States.

2. Each Party shall provide for an adequate and effective mechanism which provides an additional term of protection to compensate the patent owner for the reduction of the effective patent protection resulting from unreasonable delays[1] in granting the first marketing approval or sanitary permit in its territory. The additional term of protection shall not exceed five years.

3. Notwithstanding paragraph 2, a Party may provide for further protection, in accordance with its laws and regulations, for a product which is protected by a patent and which has been subject to a marketing approval or sanitary permit procedure, to compensate the holder of a patent for the reduction of the effective patent protection. The duration of such further protection shall not exceed five years[2].

4. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations, provided that the Party continues to give effect to this Article.

5. Each Party shall make best efforts to process applications for a marketing approval or sanitary permit for pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays. With the objective of avoiding unreasonable delays, a Party may adopt or maintain procedures that expedite the processing of applications for a marketing approval or sanitary permit.

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[1] For the purposes of this Article, an unreasonable delay includes a delay of more than two years in the first substantive response to the applicant after the date of filing of the application for a marketing approval or sanitary permit. Any delays that occur in the granting of a marketing approval or sanitary permit due to periods attributable to the applicant or any period that is beyond the control of the authority processing the application for the marketing approval or of the sanitary registration authority need not be included in the determination of such delay.

[2] This maximum duration is without prejudice to a possible further extension of the period of protection in the case of medicinal products for which pediatric studies have been carried out, and the results of those studies are reflected in the product information.

SUB-SECTION 6

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 25.44

Scope of protection of trade secrets

1. In fulfilling its obligation to comply with the TRIPS Agreement, in particular paragraphs 1 and 2 of Article 39, each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Sub-Section:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

(b) "trade secret holder" means any natural or juridical person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, at least the following conducts shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in subparagraph (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret;

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of subparagraph (b).

4. Nothing in this Sub-Section shall be understood as requiring either Party to consider any of the following conducts as being contrary to honest commercial practices:

(a) independent discovery or creation by a person of the relevant information;

(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) acquisition, use or disclosure of information required or allowed by the law of that Party; or

(d) use by employees of their experience and skills honestly acquired in the normal course of their employment.

5. Nothing in this Sub-Section shall be understood as restricting freedom of expression and information, including media freedom, as protected in each Party.

ARTICLE 25.45

Civil judicial procedures and remedies of trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article 25.44 or who has access to documents that form part of those legal proceedings is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which that person became aware as a result of such participation or access.

2. In the civil judicial proceedings referred to in Article 25.44, each Party shall provide that its judicial authorities have the authority at least to:

(a) order provisional measures, in accordance with the laws and regulations of a Party, to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order an injunction to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(c) order the person that knew or ought to have known that they were acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages that are appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;

(d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices; such specific measures may include, in accordance with the law of the Party concerned, the possibility of:

(i) restricting access to certain documents in whole or in part;

(ii) restricting access to hearings and their corresponding records or transcripts;

(iii) making available a non-confidential version of the judicial decision in which the passages containing trade secrets have been removed or redacted;

(e) impose sanctions on parties or any other persons participating in the legal proceedings who fail or refuse to comply with the orders of competent judicial authorities concerning the protection of the trade secret or alleged trade secret.

3. Each Party shall ensure that its judicial authorities do not have to apply the judicial procedures and remedies referred to in Article 25.44 if the conduct contrary to honest commercial practices is carried out, in accordance with its law, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by the law of that Party.

ARTICLE 25.46

Protection of undisclosed data related to pharmaceutical products

1. If a Party requires, as a condition for a marketing approval or sanitary permit of a pharmaceutical product which utilises a new chemical entity that has not been previously approved, the submission of an undisclosed test or other data necessary to determine whether the use of that product is safe and effective, that Party shall protect such data against disclosure to third parties if the origination of such data involves considerable effort, except where the disclosure is necessary for an overriding public interest or unless steps are taken to ensure that the data are protected against unfair commercial use.

2. Each Party shall ensure that, for at least five years from the date of a first marketing approval or sanitary permit in the Party concerned, a pharmaceutical product subsequently authorised on the basis of the results of pre-clinical tests and clinical trials submitted in the application for the first marketing approval or sanitary permit shall not be placed on the market without the explicit consent of the holder of the first marketing approval or sanitary permit.

3. There shall be no limitation on either Party to implement abbreviated authorisation procedures for pharmaceutical products on the basis of bioequivalence and bioavailability studies.

4. Each Party may provide for conditions and limitations in implementing the obligations of this Article, provided that the Party continues to give effect to this Article.

## ARTICLE 25.47

### Protection of data related to agrochemical products

1. If a Party requires, as a condition for granting marketing authorisation for an agrochemical product which utilises a new chemical entity, the submission of tests or study reports concerning the safety and efficacy of that product, that Party shall not grant an authorisation for another agrochemical product on the basis of those tests or study reports without the consent of the person that previously submitted them, for at least ten years following the date of the first marketing authorisation of the agrochemical product.

2. A Party may limit the protection under this Article to tests or study reports that fulfil the following conditions:

(a) they are necessary for the authorisation or for the amendment of an authorisation to allow the use of the agrochemical product on other crops; and

(b) they are certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. Each Party may establish rules to avoid duplicative testing on vertebrate animals.

4. Each Party may provide for conditions and limitations in implementing the obligations of this Article, provided that the Party continues to give effect to this Article.

## SUB-SECTION 7

## PLANT VARIETIES

### ARTICLE 25.48

### Protection of plant variety rights

The Parties shall protect plant variety rights, in accordance with the International Convention for the Protection of New Varieties of Plants, of 2 December 1961, as lastly revised at Geneva on 19 March 1991 ("the UPOV Convention"), including the exceptions to the breeder's right as referred to in Article 15 of the UPOV Convention, and shall cooperate to promote and enforce those rights.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 25.49

General obligations

1. Each Party reaffirms its commitments under the TRIPS Agreement and shall ensure the enforcement of intellectual property rights in accordance with its law and practice. The Parties shall provide for the measures, procedures and remedies provided for under this Sub-Section.

2. This Section does not apply to the rights covered by Sub-Section 6 of Section B.

3. A Party shall provide for measures, procedures and remedies that shall be fair and equitable, and shall not be unnecessarily complicated or costly or entail unreasonable time limits or unwarranted delays.

4. The measures, procedures and remedies referred to in paragraph 3 shall be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and as to provide for safeguards against their abuse.

5. Nothing in this Section creates any obligation on either Party:

(a) to put in place a judicial system for the enforcement of intellectual property rights that is distinct from that for the enforcement of law in general; or

(b) with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

ARTICLE 25.50

Persons entitled to seek application of enforcement measures, procedures and remedies

Each Party shall recognise the following as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

(a) holders of intellectual property rights in accordance with the law of each Party;

(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of each Party;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the law of each Party;

(d) entities[1] which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the law of each Party.

ARTICLE 25.51

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, upon submission of an application by a party who has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information under the law of that Party. In ordering provisional measures, the judicial authorities shall take into account the legitimate interests of the alleged infringer.

2. The provisional measures referred to in paragraph 1 may include a detailed description, with or without the taking of samples, or the physical seizure of the allegedly infringing goods and, in appropriate cases, the materials and implements predominantly used in the production or distribution of those goods and the documents relating thereto.

3. Each Party shall, in the case of infringement of an intellectual property right committed on a commercial scale, take the measures that are necessary to enable the competent judicial authorities to order, where appropriate, upon application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

[1] For Chile, the term "entities" means "federations and associations". For the European Union, the term "entities" means "professional defence bodies".

ARTICLE 25.52

Right of information

1. Each Party shall ensure that, during civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1, "any other person" means a person who, at least:

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing, on a commercial scale, services used in infringing activities; or

(d) was indicated by the person referred to in this paragraph as being involved in the production, manufacture or distribution of the infringing goods or the provision of the infringing services.

3. The information referred to in paragraph 1 may, as appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; and

(b) the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

4. This Article shall apply without prejudice to laws of a Party which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use, in civil proceedings, of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 25.53

Provisional and precautionary measures

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and, where appropriate, subject to a recurring penalty payment if provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, where appropriate, against a third party[1] over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

2. Each Party shall ensure that its judicial authorities may, on request of the applicant, order the seizure or the delivery up[2] of goods suspected of infringing an intellectual property right, so as to prevent their entry into, or movement within, the channels of commerce.

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1 For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

2 A Party may choose between seizure and delivery up to implement this paragraph.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that the judicial authorities may order, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of their bank accounts and other assets. For that purpose, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

ARTICLE 25.54

Remedies

1. Each Party shall ensure that the judicial authorities have the authority to order, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction, or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing an intellectual property right. If appropriate, the judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. The judicial authorities of each Party shall have the authority to order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for remedies, 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.

ARTICLE 25.55

Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer and, if appropriate, against a third party[1] over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 25.56

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and on request of the person liable to be subject to the measures provided for in Article 25.54 or 25.55, may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 25.54 or 25.55 if that person acted unintentionally and without negligence, if execution of the measures in question would cause that person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

[1] For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

ARTICLE 25.57

Damages

1. Each Party shall ensure that the judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages adequate to compensate for the injury that the right holder has suffered as a result of the infringement.

2. In determining the amount of damages under paragraph 1, the judicial authorities of each Party shall have the authority to consider, *inter alia*, any legitimate measure of value that the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price[1]. At least in cases of infringement of copyright or related rights and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer to pay the right holder the part of the infringer's profits that is attributable to the infringement, whether as an alternative to, in addition to or as part of the damages.

3. As an alternative to paragraph 2, each Party may provide that its judicial authorities have the authority, in appropriate cases, to set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

[1] For the European Union, this would also include, as appropriate, elements other than economic factors such as the moral prejudice caused to the right holder by the infringement.

4. Nothing in this Article precludes either Party from providing that if the infringer did not knowingly, or with reasonable grounds to know, engage in an infringing activity, its judicial authorities may order, in favour of the injured party, the recovery of profits or the payment of damages, which may be pre-established.

ARTICLE 25.58

Legal costs

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded the payment by the losing party of legal costs and other expenses, as provided for under the law of the Party concerned.

ARTICLE 25.59

Publication of judicial decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, on request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE 25.60

Presumption of authorship or ownership

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in this Section:

(a) for the author of a literary or artistic work to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient, in the absence of proof to the contrary, for the name of the author to appear on the work in the usual manner; and

(b) subparagraph (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE 25.61

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 that are equivalent in substance to those provided for in the relevant provisions of this Sub-Section.

SUB-SECTION 2

BORDER ENFORCEMENT

ARTICLE 25.62

Border measures

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting competent authorities to suspend the release of, or to detain, suspected goods. For the purposes of this Sub-Section, "suspected goods" means goods suspected of infringing trademarks, copyrights and related rights, geographical indications, patents, utility models, industrial designs or topographies of integrated circuits.

2. Each Party shall have in place electronic systems for the management by competent authorities of the applications granted or recorded.

3. Each Party shall ensure that its competent authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.

4. Each Party shall ensure that its competent authorities decide on the granting or recording of an application within a reasonable period of time.

5. Each Party shall ensure that the granted or recorded application applies to multiple shipments.

6. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of, or to detain, goods suspected of infringing trademarks or copyright.

7. Customs authorities shall use risk analysis to identify suspected goods. Each Party shall implement this paragraph in accordance with its law.

8. Each Party may have in place procedures allowing for the destruction of suspected goods without the need for prior administrative or judicial proceedings for the formal determination of the infringements in cases where the persons concerned agree to or do not oppose such destruction. If such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channels in such a manner as to avoid any harm to the right holder.

9. Each Party may have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods that are sent through postal or express courier consignments.

10. A Party may decide not to apply this Article to the import of goods that are put on the market of a third country by, or with the consent of, the right holders. A Party may also decide not to apply this Article to goods of a non-commercial nature contained in travellers' personal luggage.

11. The customs authorities of the Parties shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

12. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall share, as far as possible, information on trade in suspected goods affecting the other Party.

13. Without prejudice to other forms of cooperation, the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters applies to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

ARTICLE 25.63

Consistency with GATT and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by its customs authorities, whether or not covered by this Sub-Section, each Party shall ensure consistency with its obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

SECTION D

FINAL PROVISIONS

ARTICLE 25.64

Cooperation

1. The Parties shall cooperate with a view to supporting the implementation of the commitments and obligations undertaken pursuant to this Chapter.

2. The areas of cooperation on intellectual property rights protection and enforcement matters may include the following activities:

(a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;

(b) exchange of experience between the Parties on legislative progress;

(c) exchange of experience between the Parties on the enforcement of intellectual property rights;

(d) exchange of experience between the Parties on enforcement at central and sub-central level by customs authorities, police, administrative and judiciary authorities;

(e) coordination to prevent exports of counterfeit goods, including with third countries;

(f) technical assistance, capacity building, and exchange and training of personnel;

(g) the protection and defence of intellectual property rights and the dissemination of information in that regard in, *inter alia*, business circles and civil society;

(h) public awareness of consumers and right holders, as well as enhancement of institutional cooperation, in particular between their intellectual property offices;

(i) active promotion of awareness and education of the general public on policies concerning intellectual property rights;

(j) public-private collaboration engaging SMEs, including at SME-focused events or gatherings, with regard to the protection and enforcement of intellectual property rights and the reduction of their infringement; and

(k) formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of infringement of intellectual property rights, including the risk to health and safety and the connection to organised crime.

3. Each Party may make publicly available the product specifications, or a summary of those specifications, and relevant contact points for control or management of the geographical indications of the other Party as protected pursuant to Sub-Section 4 of Section B.

4. The Parties shall, directly or through the Sub-Committee referred to in Article 25.66, maintain contact on all matters related to the implementation and functioning of this Chapter.

ARTICLE 25.65

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringements, including online and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned, including in the following ways:

(a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;

(b) each Party shall endeavour to exchange information with the other Party regarding efforts to facilitate voluntary stakeholder initiatives in its territory; and

(c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing their infringement.

ARTICLE 25.66

Sub-Committee on Intellectual Property

The Sub-Committee on Intellectual Property ("Sub-Committee"), established pursuant to Article 33.4(1), shall monitor and ensure proper implementation and functioning of this Chapter and Annexes 25-A, 25-B and 25-C. The Sub-Committee shall also perform specific tasks attributed to it in this Chapter, including in Article 25.40.

# CHAPTER 26

# TRADE AND SUSTAINABLE DEVELOPMENT

## SECTION A

## COMMON PROVISIONS

### ARTICLE 26.1

### Objectives

1. The Parties recall the Agenda 21 on Environment and Development, adopted at the UN Conference on Environment and Development held in Rio de Janeiro, on 3 to 14 June 1992, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the International Labour Organization ("ILO") Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session, held in Geneva on 10 June 2008 (the "ILO Declaration on Social and Justice for a Fair Globalization"), the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" and the 2030 Agenda, and its Sustainable Development Goals.

2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing for the welfare of present and future generations.

3. In light of the above, the objective of this Chapter is to enhance the trade and investment relationship between the Parties in a way that contributes to sustainable development, in particular its labour[1] and environmental dimensions that are relevant to trade and investment.

4. This Chapter embodies a cooperative approach based on common values and interests.

ARTICLE 26.2

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, in particular to establish its own levels of domestic labour and environmental protection and its own labour and environmental priorities, and to adopt or modify its law and policies related to labour and environment accordingly.

2. The levels of protection, law and policies referred to in paragraph 1 shall be consistent with each Party's commitment to the multilateral environmental agreements ("MEAs") and multilateral labour standards and agreements, as referred to in this Chapter, to which it is party.

3. Each Party shall strive to ensure that its environmental and labour laws, regulations and policies provide for and encourage a high level of environmental and labour protection, and shall strive to continue improving its levels of environmental and labour protection provided in its laws, regulations and policies.

[1] For the purposes of this Chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO Declaration on Social Justice for a Fair Globalization.

4. A Party shall not weaken or reduce the levels of protection afforded in its environmental and labour laws and regulations in order to encourage trade or investment.

5. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental and labour laws and regulations in a manner that weakens or reduces the levels of protection afforded in those laws and regulations in order to encourage trade or investment.

6. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour laws and regulations in a manner affecting trade or investment.

7. Each Party retains the right to exercise reasonable discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources in accordance with priorities for the enforcement of its environmental and labour laws and regulations.

8. A Party shall not apply its environmental and labour laws and regulations in a manner which would constitute a disguised restriction on trade or investment.

## ARTICLE 26.3

### Trade and responsible business conduct and management of supply chains

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct or corporate social responsibility practices, and the role of trade in pursuing that objective.

2. In accordance with paragraph 1, each Party shall:

(a) promote responsible business conduct or corporate social responsibility by encouraging the uptake by businesses of relevant practices that are consistent with internationally recognised principles, standards and guidelines, including sectorial guidelines of due diligence, that have been endorsed or are supported by that Party; and

(b) support the dissemination and use of relevant international instruments that have been endorsed or are supported by that Party, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted in Geneva in November 1977 (the "ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy"), the UN Global Compact and the UN Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in its Resolution 17/4 of 16 June 2011.

3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility or responsible business conduct and shall promote joint work in that regard. The Parties shall also implement measures to promote the adherence to OECD Due Diligence Guidelines.

4. The Parties recognise the importance of promoting trade in goods that contribute to enhanced social conditions and environmentally sound practices, such as environmental goods and services contributing to a resource-efficient, low-carbon economy, goods whose production is not linked to deforestation and goods that are the subject of voluntary sustainability assurance schemes and mechanisms.

5. The Parties shall exchange information as well as best practices and, as appropriate, cooperate bilaterally, regionally and in international fora on issues covered by this Article.

ARTICLE 26.4

Scientific and technical information

1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment between the Parties, each Party shall take into account available scientific and technical evidence, preferably from recognised technical and scientific bodies, as well as relevant international standards, guidelines or recommendations, where they exist.

2. If scientific evidence or information is insufficient or inconclusive and there is a risk of serious environmental degradation or a risk to occupational health and safety in its territory, a Party may adopt measures based on the precautionary principle. Such measures shall be subject to review if new or additional scientific information becomes available.

3. If a measure adopted in accordance with paragraph 2 has an impact on trade or investment between the Parties, a Party may request the Party that adopted the measure to provide information indicating that the measure is consistent with its own levels of protection, and may request discussion of the matter in the Sub-Committee on Trade and Sustainable Development.

4. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade or investment.

ARTICLE 26.5

Transparency and good regulatory practices

The Parties recognise the importance of the application of the rules on transparency and good regulatory practices in accordance with Chapters 28 and 29, in particular the rules providing opportunities for interested persons to submit views in respect of:

(a) measures aimed at protecting the environment and labour conditions that may affect trade or investment; and

(b) trade or investment measures that may affect the protection of the environment or labour conditions.

ARTICLE 26.6

Public awareness, information, participation and procedural guarantees

1. Each Party shall promote public awareness of its labour and environmental laws and regulations, including by ensuring that its labour and environmental laws and regulations and its enforcement and compliance procedures are publicly available.

2. Each Party shall seek to accommodate requests for information from any person regarding the Party's implementation of this Chapter.

3. Each Party shall make use of the mechanisms referred to in Articles 33.5, 33.6 and 33.7 to seek views on matters related to the implementation of this Chapter.

4. Each Party shall provide for the receipt of, and give due consideration to, communications and opinions by way of written submissions from a person of that Party on matters related to the implementation of this Chapter in accordance with its domestic procedures. A Party shall respond in writing and in a timely manner to such submissions. It may notify such communications and opinions to its Domestic Consultative Group established pursuant to Article 33.6 and the contact point of the other Party designated pursuant to Article 26.19(6).

5. Each Party shall, in accordance with its law, ensure that access to administrative or judicial procedures is available to persons with a legally recognised interest in a particular matter or who claim that their right has been infringed, in order to permit action against infringements of its environmental or labour law, including appropriate remedies for violations of such law.

6. Each Party shall, in accordance with its law, ensure that the procedures referred to in paragraph 5 comply with due process, are not prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide the possibility to order an injunction if appropriate, and are fair, equitable and transparent.

## ARTICLE 26.7

## Cooperation activities

1. The Parties recognise the importance of cooperation activities on trade-related aspects of environmental and labour policies in order to achieve the objectives of this Agreement and implement this Chapter.

2. Cooperation activities can be developed and implemented with the participation of international and regional organisations as well as with third countries, businesses, employers' and workers' organisations, education and research organisations and other non-governmental organisations, as appropriate.

3. Cooperation activities shall be carried out on issues and topics agreed upon by the Parties to address matters of common interest.

4. The Parties may cooperate on issues as provided for in this Chapter as well as, *inter alia*:

(a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the UN High-level Political Forum on Sustainable Development, the UN Environment Programme ("UNEP"), the ILO and MEAs;

(b) the impact of labour and environmental laws and standards on trade and investment;

(c) the impact of trade and investment law on labour and the environment; and

(d) trade-related aspects of:

(i) initiatives on sustainable consumption and production, including those aimed at promoting a circular economy and green growth and pollution abatement; and

(ii) initiatives to promote environmental goods and services, including by addressing related non-tariff barriers.

5. The priorities for cooperation activities shall be decided jointly by the Parties on the basis of areas of mutual interest and available resources.

6. The Parties may carry out activities in the cooperation areas set out in this Chapter in person or by any technological means available to the Parties.

## SECTION B

## ENVIRONMENT AND TRADE

### ARTICLE 26.8

### Objectives

1. The Parties aim to promote mutually supportive trade and environmental policies, high levels of environmental protection in line with MEAs to which they are party, respectively, and effective enforcement of their respective environmental laws and regulations, and to enhance their capacity to address trade-related environmental issues, including through cooperation.

2. The Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources has benefits that can contribute to sustainable development, strengthen their environmental governance and complement the objectives of this Agreement.

3. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in promoting sustainable development.

## ARTICLE 26.9

### Multilateral environmental governance and agreements

1. The Parties recognise the importance of the UN Environment Assembly of the UNEP. The Parties recognise the critical role of MEAs in addressing global, regional and domestic environmental challenges. The Parties further recognise the need to enhance mutual supportiveness between trade and environmental policies. Accordingly, each Party shall effectively implement MEAs, including their protocols, to which it is party.

2. The Parties recognise the right of each Party to adopt or maintain measures to further the objectives of MEAs to which it is party.

3. The Parties shall engage in dialogue and cooperate, as appropriate, on trade and environmental issues of mutual interest, in particular with respect to MEAs. This shall include regular exchanges of information on the initiatives of each Party regarding the ratifications of MEAs, including their protocols and amendments.

ARTICLE 26.10

Trade and climate change

1. The Parties recognise the importance of MEAs in the area of climate change, in particular the need to achieve the objective of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 ("UNFCCC"), and the purpose and goals of the Paris Agreement, in order to address the urgent threat of climate change. Accordingly, the Parties recognise the role of trade in achieving the goal of sustainable development and addressing climate change, as well as the importance of individual and collective efforts to address climate change impacts through mitigation and adaptation actions.

2. In accordance with paragraph 1, each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement, including its commitments with regard to its nationally determined contributions;

(b) promote the positive contribution of trade to the transition to a low greenhouse gas emission and circular economy and to climate-resilient development, including actions on climate change mitigation and adaptation; and

(c) facilitate and promote trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, for sustainable renewable energy and for energy efficiency, in a manner consistent with other provisions of this Agreement.

3. In accordance with Article 26.7, the Parties shall cooperate, as appropriate, on trade-related aspects of climate change, bilaterally, regionally and in international fora, including in the UNFCCC, the WTO and the Montreal Protocol on Substances that Deplete the Ozone Layer, concluded at Montreal on 16 September 1987 ("Montreal Protocol"). Furthermore, the Parties may cooperate, as appropriate, on those issues also in the International Maritime Organization.

4. In accordance with paragraph 1, the Parties shall cooperate in areas such as:

(a) exchanging knowledge and experience regarding the implementation of the Paris Agreement, as well as on initiatives to promote climate resilience, renewable energy, low emission technologies, energy efficiency, carbon pricing, sustainable transport, sustainable and climate-resilient infrastructure development, emissions monitoring, and nature-based solutions; as well as exploring options to cooperate in areas such as short-life climate pollutants and soil carbon sequestration; and

(b) exchanging knowledge and experience regarding an ambitious phase-out of ozone depleting substances and the phase-down of hydrofluorocarbons under the Montreal Protocol through measures to control their production, consumption and trade, the introduction of environmentally friendly alternatives to those ozone depleting substances and hydrofluorocarbons, updating of safety and other relevant standards, and combating the illegal trade of substances regulated by the Montreal Protocol, as appropriate.

ARTICLE 26.11

Trade and forests

1. The Parties recognise the importance of sustainable forest management, and the role of trade in pursuing that objective.

2. In accordance with paragraph 1, each Party shall:

(a) implement measures to combat illegal logging and related trade, including through cooperation activities with third countries, as appropriate;

(b) encourage the conservation and sustainable management of forests;

(c) promote trade and consumption of timber and timber products which are legally obtained from sustainably managed forests; and

(d) exchange information and, as appropriate, cooperate with the other Party on trade-related initiatives on combating illegal logging, sustainable forest management, deforestation and forest degradation, forest governance and on the conservation of forest cover to maximise the impact and mutual supportiveness of their respective policies of common interest.

3. Recognising that forests and their sustainable management have a key role in combating climate change and maintaining biodiversity, each Party shall promote initiatives addressing deforestation, including through deforestation-free supply chains. Additionally, the Parties shall cooperate, as appropriate and in accordance with Article 26.7, bilaterally, regionally and in relevant international fora, to minimise deforestation and forest degradation worldwide.

ARTICLE 26.12

Trade and wild flora and fauna

1. The Parties recognise the importance of ensuring that international trade of wild fauna and flora does not threaten their survival, as set out in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 ("CITES").

2. In accordance with paragraph 1, each Party shall:

(a) implement effective measures to combat illegal trade in wild flora and fauna, including through cooperation activities with third countries, as appropriate; and

(b) promote the long-term conservation and sustainable use of the species listed in the Appendices to CITES, including by cooperating in the relevant CITES bodies to keep the Appendices to CITES up-to-date and by promoting the inclusion of species considered to be at risk because of international trade and other criteria established under CITES.

3. In accordance with Article 26.7, the Parties may, as appropriate, cooperate or exchange information bilaterally, regionally and in international fora on issues of mutual interest related to tackling illegal trade in wild flora and fauna, including through raising awareness to reduce demand for illegal wildlife products and initiatives to enhance cooperation on information sharing and enforcement.

ARTICLE 26.13

Trade and biological diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity, and the role of trade in pursuing those objectives, consistent with the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, other relevant MEAs to which they are party, and the decisions adopted thereunder.

2. In accordance with paragraph 1, each Party shall take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, including through the exchange of information and experience, and measures to prevent the spread of invasive alien species, recognising that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and human health.

3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity, and the role of trade therein.

4. The Parties recognise the importance of facilitating access to genetic resources and of promoting the fair and equitable sharing of benefits arising from the use of genetic resources, in accordance with their respective domestic measures and each Party's international obligations.

5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity.

6. In accordance with Article 26.7, the Parties may, as appropriate, promote, cooperate or exchange information bilaterally, regionally and in international fora, on trade-related aspects of biological diversity policies and measures of mutual interest, such as:

(a) initiatives and good practices concerning trade in natural resource-based products obtained through a sustainable use of biological resources and which contribute to the conservation of biodiversity;

(b) the conservation and sustainable use of biological diversity, and the protection, restoration and valuation of ecosystems and their services and related economic instruments; and

(c) access to genetic resources and the fair and equitable sharing of benefits from their utilisation.

ARTICLE 26.14

Trade and sustainable management of fisheries and aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems, and the role of trade in pursuing those objectives.

2. While developing and implementing conservation and management measures, the Parties shall take into consideration social, trade, development and environmental concerns and the importance of artisanal or small-scale fisheries to the livelihoods of local fishing communities.

3. The Parties acknowledge that illegal, unreported and unregulated (IUU) fishing[1] can have significant negative impacts on fish stocks, on the sustainability of trade in fisheries products, and on development and the environment, and confirm the need for action to address the problems of overfishing and unsustainable utilisation of fisheries resources.

4. In accordance with paragraphs 1, 2 and 3 of this Article, each Party shall:

(a) implement and act in accordance with the principles of the UN Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, the UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in New York, on 4 August 1995, the Food and Agriculture Organization of the UN ("FAO"), the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted in Rome on 24 November 1993, the FAO Code of Conduct for Responsible Fisheries, adopted in Resolution 4/95 on 31 October 1995, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done in Rome on 22 November 2009;

(b) participate in the FAO's initiative on the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels;

[1] The term "illegal, unreported and unregulated fishing" is to be understood to have the same meaning as set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organization, adopted in Rome, 2001 ("2001 IUU Fishing Plan of Action").

(c) seek to operate a fisheries management system based on the best available scientific evidence and on internationally recognised best practices for fisheries management and conservation, as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species[1], and designed, *inter alia*, to:

(i) prevent overfishing and overcapacity;

(ii) reduce bycatch of non-target species;

(iii) promote the recovery of overfished stocks for all marine fisheries; and

(iv) promote fisheries management with an ecosystem approach, including through cooperation among the Parties;

(d) in support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from those practices:

(i) implement effective measures to combat IUU fishing;

[1] Those instruments include, among others, and as they may apply, the UN Convention on the Law of the Sea, the UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Code of Conduct for Responsible Fisheries, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the 2001 IUU Fishing Plan of Action, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

(ii) ensure the use of monitoring, control, surveillance, compliance and enforcement systems, to:

(A) prevent and deter, in accordance with its international obligations and its law, vessels that are flying its flag and its natural persons from engaging in IUU fishing activities; and

(B) address the transhipment at sea of fish or fish products to deter and avoid IUU fishing activities;

(iii) implement port state measures; and

(iv) implement measures to prevent IUU fishing and fish products from entering in each Party's supply chains and cooperate to that end, including by facilitating the exchange of information;

(e) participate actively in the work of the regional fisheries management organisations ("RFMOs") of which it is a member, observer, or to which it is cooperating non-contracting party, with the aim of achieving good fisheries governance and sustainable fisheries, such as through the promotion of scientific research and the adoption of conservation measures based on best scientific evidence available, the strengthening of compliance mechanisms, the undertaking of periodical performance reviews and the adoption of effective control, monitoring and enforcement of the RFMOs' management measures and, where applicable, the adoption and implementation of catch documentation or certification schemes and port state measures;

(f) strive to act in accordance with relevant conservation and management measures adopted by RFMOs of which it is not a member so as not to undermine those measures and endeavour not to undermine catch or trade documentation schemes operated by RFMOs or arrangements of which it is not a member; and

(g) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects, according to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

5. The Parties shall cooperate, as appropriate and in accordance with Article 26.7, bilaterally and within RFMOs with the aim of promoting sustainable fishing practices and trade in fish products from sustainably managed fisheries. Additionally, the Parties may cooperate to exchange knowledge and good practices to support the implementation of this Article.

SECTION C

LABOUR AND TRADE

ARTICLE 26.15

Objectives

1. The Parties recognise that trade and investment provides opportunities for job creation and decent work, including for young people, with terms and conditions of employment that adhere to the principles laid down in the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in Geneva on 18 June 1998 and as amended in 2022 (the "ILO Declaration on Fundamental Principles and Rights at Work") and the ILO Declaration on Social Justice for a Fair Globalization, adopted on 10 June 2008 and as amended in 2022 (the "ILO Declaration on Social Justice for a Fair Globalization").

2. The Parties aim to ensure high levels of labour protection in line with the international labour standards to which they adhere and to promote mutually supportive trade and labour policies with a view to improving the working conditions and quality of work life of employees. They will strive to improve the development and management of human capital for enhanced employability, business excellence, and greater productivity for the benefit of both workers and enterprise. Accordingly, the Parties endeavour to provide opportunities for young people to develop the necessary skills to successfully access and remain in the labour market.

3. The Parties aim to cooperate on trade-related labour issues of mutual interest in order to strengthen the broader relationship between the Parties.

ARTICLE 26.16

Multilateral labour standards and agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, in particular women, young people and persons with disabilities, in line with their respective obligations under the ILO, including those stated in the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization.

2. Recalling the ILO Declaration on Social Justice for a Fair Globalization, the Parties note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

3. Each Party shall effectively implement the ILO Conventions ratified by Member States and Chile respectively.

4. In accordance with the Constitution of the ILO, adopted as Part XIII of the Treaty of Versailles, signed on 28 June 1919, and the ILO Declaration on Fundamental Principles and Rights at Work, each Party shall respect, promote and effectively implement the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour including the prohibition on the worst forms of child labour;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) a safe and healthy working environment.

5. The Parties shall regularly exchange information on their respective progress with regard to the ratification of ILO Conventions or protocols that are classified as up-to-date by the ILO and to which they are not yet party.

6. Each Party shall promote the ILO Decent Work Agenda as set out in the ILO Declaration on Social Justice for a Fair Globalization, in particular with regard to:

(a) decent working conditions for all, with regard to, *inter alia*, wages and earnings, working hours, other conditions of work and social protection; and

(b) social dialogue on labour matters among workers and employers and their respective organisations, and with relevant governmental authorities.

7. In accordance with its commitments under the ILO, each Party shall:

(a) adopt and implement measures and policies regarding occupational safety and health; and

(b) maintain a labour inspection system in accordance with the relevant ILO standards on labour inspection.

ARTICLE 26.17

Forced or compulsory labour

1. Recalling that the elimination of forced labour is among the objectives of the Agenda 2030, the Parties underline the importance of the ratification and the effective implementation of the Protocol of 2014 to the Forced Labour Convention 1930, adopted at Geneva on 11 June 2014.

2. The Parties recognise the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour.

3. Consequently, the Parties shall identify opportunities for cooperation, sharing information, experiences and good practices related to the elimination of all forms of forced or compulsory labour.

ARTICLE 26.18

Cooperation on trade and labour issues

In accordance with Article 26.7, the Parties shall consult and cooperate, as appropriate, bilaterally and in the context of the ILO, on trade-related labour issues of mutual interest, including, but not limited to:

(a) job creation and the promotion of productive, high-quality employment, including policies to generate job-rich growth and promote sustainable enterprises and entrepreneurship;

(b) promotion of improvements in business and labour productivity, in particular in respect of small and medium-sized enterprises;

(c) human capital development, access to labour market and the enhancement of employability, in particular of young people, including through lifelong learning and vocational training, continuous education, training and the development and upgrading of skills, including in emerging and environmental industries;

(d) work-life balance and innovative workplace practices to enhance workers' well-being;

(e) promotion of the awareness of the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue and gender equality;

(f) promotion of decent quality jobs through trade, including the safety and health at work of pregnant workers and workers who have recently given birth;

(g) occupational safety and health and labour inspection, for example, improving compliance and enforcement mechanisms;

(h) addressing the challenges and opportunities of a diverse, multigenerational workforce, including through the:

(i) promotion of equality and elimination of discrimination in respect of employment and occupation; and

(ii) protection of vulnerable workers;

(i) improving labour relations, for example, through the exchange of best practices in alternative dispute resolution and tripartite consultation;

(j) the implementation of fundamental, priority and other up-to-date ILO Conventions, as well as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights; and

(k) labour statistics.

## SECTION D

## INSTITUTIONAL ARRANGEMENTS

### ARTICLE 26.19

### Sub-Committee on Trade and Sustainable Development and contact points

1. The Sub-Committee on Trade and Sustainable Development ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed, for Chile, of officials from the institutions responsible for trade, labour, environment and gender issues.

2. The Sub-Committee shall have specific sessions for environmental and labour matters[1], respectively, as well as for cross-cutting issues related to trade and sustainable development.

3. The functions of the Sub-Committee shall be to:

(a) facilitate, monitor and review the implementation of this Chapter;

(b) determine, organise, oversee and assess the cooperation activities laid down in this Chapter, including exchange of information and experience on areas of mutual interest;

(c) report and make recommendations to the Trade Committee on any matter related to this Chapter, including with regard to topics for discussion with the civil society mechanisms referred to in Article 33.5;

(d) carry out the tasks referred to in Articles 26.21 and 26.22;

(e) coordinate with other Sub-Committees established under this Agreement, as appropriate, including as regards the efforts to integrate gender-related issues, considerations and activities in their work as referred to in Article 27.4(8); and

(f) carry out any other functions as the Parties may agree.

4. The Sub-Committee, as mutually agreed, may consult or seek the advice of relevant stakeholders or experts on matters relating to the implementation of this Chapter.

[1] The environmental and labour matters can be discussed in isolated sessions or in consecutive sessions.

5. The Sub-Committee shall, by consensus, prepare a report on each meeting and shall publish it after the meeting.

6. Each Party shall designate a contact point within its administration to facilitate communication and coordination between the Parties on any matter relating to the implementation of this Chapter. For Chile, specific contact points for labour, environmental and gender matters shall be a representative of the Under-Secretariat of International Economic Relations of the Ministry of Foreign Affairs or its successor. Each Party shall promptly notify the other Party of its contact points and provide their contact information.

7. The contact points shall:

(a) facilitate regular communication and coordination between the Parties;

(b) notwithstanding Article 33.3(2), assist the Sub-Committee including by establishing the agenda and conducting all other necessary preparations for the meetings of the Sub-Committee.

(c) communicate with their respective civil society, as appropriate; and

(d) work together, including with other appropriate bodies of their administrations, to develop and implement cooperation activities.

ARTICLE 26.20

Dispute resolution

1. The Parties shall make all possible efforts through dialogue, exchange of information and cooperation to address any disagreement between the Parties regarding the interpretation or application of this Chapter.

2. In the event of a disagreement between the Parties regarding the interpretation or application of this Chapter, the Parties shall have recourse exclusively to the dispute resolution procedures established pursuant to Articles 26.21 and 26.22.

ARTICLE 26.21

Consultations

1. A Party ("the requesting Party") may, at any time, request consultations with the other Party ("the responding Party") about any matter arising with regard to the interpretation or application of this Chapter by delivering a written request to the contact point of the responding Party. The request shall set out the reasons for requesting consultations, including a sufficiently specific description of the matter at issue and the provisions of this Chapter that it considers applicable.

2. The responding Party shall, unless agreed otherwise with the requesting Party, reply in writing no later than 10 days after the date of receipt of the request.

3. The Parties shall begin consultations no later than 30 days after the date of receipt of the request by the responding Party, unless the Parties agree otherwise.

4. The consultations may be held in person or by any technological means available to the Parties. If consultations are held in person, they shall be held in the territory of the responding Party, unless the Parties agree otherwise.

5. In the consultations the Parties shall:

(a) provide sufficient information to enable a full examination of the matter; and

(b) treat any information exchanged in the course of the consultations confidentially.

6. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation related to the matter. In respect of matters related to the multilateral agreements referred to in this Chapter, the Parties shall consider information from the ILO or relevant bodies established under those agreements. Where relevant, the Parties may agree to seek advice from such organisations or bodies, or any other expert or body they deem appropriate to assist them in the consultations.

7. If the Parties are unable to resolve the matter within 60 days of the delivery of the written request for consultations pursuant to paragraph 1, each Party may, by delivering a written request to the contact point of the other Party, request that the Sub-Committee be convened to consider the matter. The Sub-Committee shall convene promptly and endeavour to agree on a resolution of the matter.

8. Each Party or the Sub-Committee convened pursuant to paragraph 7 of this Article may, if appropriate, seek the views of the Domestic Consultative Groups referred to in Article 33.6 or other expert advice.

9. If the Parties are able to resolve the matter, they shall document the outcome thereof including, if appropriate, specific steps and timelines agreed upon. The Parties shall make the outcome available to the public, unless they agree otherwise.

ARTICLE 26.22

Panel of experts

1. If the Parties fail to resolve the matter within 60 days of the delivery of a written request to convene the Sub-Committee as referred to in Article 26.21(7) or, if no such request is made, within 120 days of the delivery of a written request for consultations pursuant to Article 26.21(1), the requesting Party may request the establishment of a panel of experts to examine the matter.

Any such request shall be made in writing to the contact point of the responding Party. The request shall identify the reasons for requesting the establishment of a panel of experts, including a sufficiently specific description of the matter at issue, and explain how that matter constitutes a breach of specific provisions of this Chapter.

2. Except as otherwise provided for in this Article, Articles 31.6, 31.10, 31.13, Article 31.14(1), Articles 31.15, 31.19, Article 31.20(2), and Articles 31.21, 31.22, 31.24, 31.32, 31.33, 31.34 and 31.35, as well as the Rules of Procedure in Annex 31-A and the Code of Conduct in Annex 31-B, shall apply *mutatis mutandis*.

3. The Sub-Committee shall, at its first meeting, recommend to the Trade Committee the establishment of at least 15 individuals who are willing and able to serve on the panel of experts. Based on this recommendation, the Trade Committee shall no later than one year after entry into force of this Agreement establish a list of such individuals. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by Chile; and

(c) one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson to the panel of experts.

4. Each sub-list shall include at least five individuals. The Trade Committee shall ensure that the list is kept up-to-date and that it is maintained at that minimum number of individuals.

5. The individuals referred to in paragraph 3 shall have specialised knowledge of or expertise in labour or environmental law, issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the disagreement, or be affiliated with the government of any Party, and shall comply with the Code of Conduct in Annex 31-B.

6. When the panel of experts is composed according to the procedures set out in Article 31.6(3), (4) and (6), the experts shall be selected from the relevant sub-lists referred to in paragraph 3 of this Article.

7. Unless the Parties agree otherwise within five days of the date of establishment of the panel of experts the terms of reference shall be:

"to examine, in the light of the relevant provisions of Chapter 26 of the Interim Agreement on Trade between the European Union and the Republic of Chile, the matter referred to in the request for the establishment of the panel of experts, and to issue a report, in accordance with Article 26.23 of that Agreement, with its findings and recommendations for the resolution of the matter".

8. With regard to matters related to the multilateral agreements referred to in this Chapter, the panel of experts should seek information from the ILO or relevant bodies established under those agreements, including any pertinent available interpretative guidance, findings or decisions adopted by the ILO and those bodies. Any such information shall be provided to both Parties for their comments.

9. The panel of experts shall interpret the provisions of this Chapter in accordance with the customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties.

10. The panel of experts shall issue to the Parties an interim report and a final report setting out the findings of facts, the applicability of the relevant provisions and the rationale behind any findings, conclusions and the recommendations it makes.

11. The panel of experts shall deliver to the Parties the interim report within 100 days after the date of establishment of the panel of experts. If the panel of experts considers that this time limit cannot be met, the chairperson of the panel of experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its interim report. The time limit set out in this paragraph may be extended by mutual agreement of the Parties.

12. A Party may deliver to the panel of experts a reasoned request to review particular aspects of the interim report within 25 days after the delivery of the interim report. A Party may comment on the other Party's request within 15 days of the delivery of the request.

13. After considering the request and comments, the panel of experts shall prepare the final report. If no request to review particular aspects of the interim report is delivered within the time period referred to in paragraph 12, the interim report shall become the final report of the panel of experts.

14. The panel of experts shall deliver its final report to the Parties within 175 days of the date of establishment of that panel. If the panel of experts considers that this time limit cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its final report. The time limit set out in this paragraph may be extended by mutual agreement of the Parties.

15. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address any comments provided by the Parties.

16. The Parties shall make the final report available to the public within 15 days of its delivery by the panel of experts.

17. If the panel of experts finds in the final report that a Party has not complied with its obligations under this Chapter, the Parties shall discuss appropriate measures to be implemented, taking into account the report and recommendations of the panel of experts. The responding Party shall inform its Domestic Consultative Group referred to in Article 33.6 and the other Party of its decisions on any actions or measures to be implemented no later than three months after the report has been made publicly available.

18. The Sub-Committee shall monitor the follow-up to the final report and recommendations of the panel of experts. The Domestic Consultative Groups referred to in Article 33.6 may submit observations to the Sub-Committee in that regard.

## ARTICLE 26.23

## Review

1. For the purpose of enhancing the achievement of the objectives of this Chapter, the Parties shall discuss through the meetings of the Sub-Committee its effective implementation, taking into account, *inter alia*, major policy developments in each Party and developments in international agreements.

2. Taking into account the outcome of such discussions, a Party may request the review of this Chapter at any time after the date of entry into force of this Agreement. For that purpose, the Sub-Committee may recommend to the Parties amendments of the relevant provisions of this Chapter, in accordance with the amendment procedure established in Article 33.10(1).

# CHAPTER 27

# TRADE AND GENDER EQUALITY

## ARTICLE 27.1

### Context and objectives

1. The Parties agree on the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and on the key role that gender-responsive policies can play in that regard. This includes removing barriers to women's participation in the economy and international trade, including improving equal opportunities of access to work functions and sectors for men and women in the labour market.

2. The Parties acknowledge that international trade and investment are engines of economic growth and also recognise the important contribution of women to economic growth through their participation in economic activity, including business and international trade.

3. The Parties recognise that women's participation in international trade can contribute to advancing their economic empowerment and economic independence. Furthermore, women's access to, and ownership of, economic resources contribute to sustainable and inclusive economic growth, prosperity, competitiveness, and the well-being of society. Accordingly, the Parties underline their intention to implement this Agreement in a manner that promotes and enhances equality between men and women.

4. The Parties recall the United Nations 2030 Agenda for Sustainable Development and the SDGs pertaining to trade and gender equality, in particular Goal 5: achieve gender equality and empower all women and girls.

5. The Parties recall the objectives of the Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference held in Buenos Aires in December 2017.

6. The Parties recall their commitments on mainstreaming gender equality and the empowerment of women and girls as well as the respect for democratic principles and human rights and fundamental freedoms, as set out in the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, and other relevant international human rights instruments related to gender equality to which they are party.

7. The Parties reaffirm their commitments under the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference of Women, held in Beijing from 4 to 15 September 1995, noting in particular the objectives and provisions related to women's equal access to resources, employment, markets and trade.

8. The Parties reaffirm the importance of inclusive trade policies which contribute to the promotion of equal rights, treatment and opportunities between men and women as well as to the elimination of all forms of discrimination against women.

9. The Parties emphasise the role of the private sector in fostering gender equality by applying non-discrimination and diversity policies in their corporate operations in line with international guidelines and standards endorsed or supported by the Parties.

10. The Parties aim to:

(a) enhance their trade relations, cooperation and dialogue in ways that are conducive to equal opportunities for, and treatment of, women and men, as workers, producers, traders or consumers, in accordance with their international commitments.

(b) facilitate cooperation and dialogue with the aim of enhancing the capacity and conditions for women to access opportunities created by trade.

(c) further improve their capacities to address trade-related gender issues, including through exchange of information and best practices.

ARTICLE 27.2

Multilateral agreements

1. Each Party reaffirms its commitment to effectively implement its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the UN General Assembly on 18 December 1979, noting in particular those provisions related to eliminating discrimination against women in economic life and in the field of employment.

2. The Parties recall their respective obligations under Article 26.16 of this Agreement regarding the ILO Conventions related to gender equality and the elimination of discrimination in respect of employment and occupation ratified by Member States and Chile.

3. Each Party reaffirms its commitment to effectively implement its obligations under other multilateral agreements to which it is party addressing gender equality or women's rights.

## ARTICLE 27.3

## General provisions

1. The Parties recognise the right of each Party to establish its own scope and guarantees of equal opportunities for men and women and to adopt or modify accordingly its relevant laws and policies, in accordance with its commitments under the international agreements referred to in Article 27.2.

2. Each Party shall strive to ensure that its relevant laws and policies provide for, and promote equal rights, treatment and opportunities between men and women, in accordance with its international commitments. Each Party shall strive to improve such laws and policies.

3. Each Party shall endeavour to gather sex-disaggregated data related to trade and gender with a view to better understanding the different impacts of trade policy instruments on women and men in their roles as workers, producers, traders or consumers.

4. Each Party shall promote in its territory public awareness of its laws and policies related to gender equality, including their impact on and relevance for inclusive economic growth and for trade policy.

5. Each Party shall, when relevant, take into account the objective of equality between men and women when formulating, implementing and reviewing measures in the areas covered under this Agreement.

6. Each Party shall encourage trade and investment by promoting equal opportunities and the participation of women and men in the economy and international trade. This includes, *inter alia*, measures that aim at: progressively eliminating all types of discrimination on grounds of sex; promoting the principle of equal pay for work of equal value in order to address the gender pay gap and facilitating the non-discrimination of women in employment and occupation, including for reasons of pregnancy and maternity.

7. A Party shall not weaken or reduce the protection granted under its respective laws aimed at ensuring gender equality or equal opportunities for women and men in order to encourage trade or investment.

8. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its respective laws aimed at ensuring gender equality or equal opportunities for women and men, in a manner that weakens or reduces the protection granted pursuant to those laws, in order to encourage trade or investment.

9. A Party shall not fail to effectively enforce, through a sustained or recurring course of action or inaction, the protection granted under its respective laws aimed at ensuring gender equality or equal opportunities for women and men in a manner affecting trade or investment.

ARTICLE 27.4

Cooperation activities

1. The Parties acknowledge the benefits of sharing their respective experiences in designing, implementing, monitoring and strengthening trade-related aspects of gender equality measures.

2. In accordance with paragraph 1, the Parties shall carry out cooperation activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and fully benefit from the opportunities created by this Agreement.

3. Cooperation activities shall be carried out on issues and topics agreed upon by the Parties.

4. Cooperation activities may be developed and implemented with the participation of the UN, WTO, ILO, OECD and other international organisations, as well as of third countries, businesses, employers' and workers' organisations, education and research organisations and other non-governmental organisations, as appropriate.

5. Areas of cooperation may include sharing experiences and best practices relating to policies and programmes in order to encourage women's increased participation in international trade as well as trade-related aspects of:

(a) the promotion of women's financial inclusion and education as well as access to financing and financial assistance;

(b) the advancement of women's leadership and the development of women's networks;

(c) the promotion of women's full participation in the economy by encouraging their participation, leadership and education, in particular in fields in which they are underrepresented, such as science, technology, engineering, mathematics (STEM), as well as innovation and business;

(d) the promotion of gender equality within enterprises;

(e) women's participation in decision-making positions in the public and private sectors;

(f) public and private initiatives aimed at the promotion of female entrepreneurship, including the integration of women in the formal sector of the economy, enhancing the competitiveness of women-led enterprises to allow them to participate and compete in local, regional, and global value chains, and activities to promote the internationalisation of small and medium-sized enterprises led by women;

(g) policies and programmes to improve women's digital skills and access to online business tools and e-commerce platforms;

(h) the advancement of care policies and programmes as well as work-life balance measures with a gender perspective;

(i) the exploration of the link between the increased participation of women in international trade and the reduction of the gender pay gap;

(j) the development of gender-based analysis of trade policies, including design, implementation and monitoring of their effects;

(k) the collection of sex-disaggregated data, the use of indicators, monitoring and evaluation methodologies, and the analysis of statistics related to trade from a gender perspective;

(l) the exploration of linkages between women's participation in international trade and areas such as decent work, occupational segregation, and working conditions of women, including the safety and health at work of pregnant workers and workers who have recently given birth, in accordance with subparagraph (f) of Article 26.18;

(m) policies and programmes to prevent, mitigate and respond to the differentiated economic impact that crises and emergencies have on women and men; and

(n) other issues as agreed by the Parties.

6. The priorities for cooperation activities shall be decided jointly by the Parties on the basis of areas of mutual interest and available resources.

7. Cooperation, including in the areas set out in paragraph 5, may be undertaken in person or by any technological means available to the Parties, through activities such as: workshops, seminars, conferences, collaborative programmes and projects; exchange of experiences, and sharing of best practices on policies and procedures; and the exchange of experts.

8. Through the Sub-Committee on Trade and Sustainable Development established pursuant to Article 33.4(1), the Parties shall encourage efforts by the bodies established in this Agreement to integrate gender-related issues, considerations and activities in their work.

9. The Parties shall encourage inclusive participation of women in the implementation of the cooperation activities established pursuant to this Article, as appropriate.

ARTICLE 27.5

Institutional arrangements

1. The Sub-Committee on Trade and Sustainable Development established pursuant to Article 33.4(1) shall be responsible for the implementation of this Chapter. Article 26.19 shall apply to this Chapter *mutatis mutandis*[1].

2. When interacting with civil society in the Domestic Consultative Groups created or designated pursuant to Article 33.6 and in the Civil Society Forum organised pursuant to Article 33.7, the Parties shall encourage the participation of organisations promoting equality between men and women.

ARTICLE 27.6

Dispute resolution

Articles 26.20, 26.21 and 26.22 apply to this Chapter *mutatis mutandis*[2].

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[1] For greater certainty, any reference to Chapter 26, or to environmental and labour issues or matters, in that Article shall be understood as referring to this Chapter, or gender issues or matters, as applicable.

[2] For greater certainty, any reference to Chapter 26, or to environmental and labour issues, matters or laws, in those Articles shall be understood as referring to this Chapter, or gender issues, matters or laws related to these issues or matters, as applicable.

ARTICLE 27.7

Review

1. The Parties agree on the importance of monitoring and assessing, jointly or individually, through their respective processes and institutions, as well as those set up under this Agreement, the impact of the implementation of this Agreement on equality between men and women and opportunities provided for women in relation to trade.

2. The Parties may review this Chapter in light of the experience gained in its implementation and if necessary, suggest how it may be strengthened.

# CHAPTER 28

# TRANSPARENCY

## ARTICLE 28.1

### Objective

1. The Parties, recognising the impact which their respective regulatory environments may have on trade and investment between them, aim at providing a predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises.

2. The Parties reaffirm their respective commitments under the WTO Agreement, and, in this Chapter, build on those commitments and lay down further arrangements for transparency.

## ARTICLE 28.2

### Definitions

For the purposes of this Chapter:

(a) "administrative decision" means a decision or action with legal effect that applies to a specific person, good or service in an individual case and covers the failure to take an administrative decision as provided for in the law of a Party; and

(b) "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation, and that establishes a norm of conduct, but does not include:

(i) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(ii) a ruling that adjudicates with respect to a particular act or practice.

ARTICLE 28.3

Publication

1. Each Party shall ensure that its laws, regulations, procedures, administrative rulings of general application and judicial decisions with respect to any matter covered by this Agreement are promptly published via an officially designated medium and, where feasible, by electronic means, or otherwise made available in such a manner as to enable any person to become acquainted with them.

2. Each Party shall provide an explanation of the objective of, and rationale for, its laws, regulations, procedures, administrative rulings of general application and judicial decisions with respect to any matter covered by this Agreement.

3. Each Party shall provide a reasonable period of time between the date of publication and the date of entry into force of the laws and regulations with respect to any matter covered by this Agreement, except where it is not possible on grounds of urgency. This paragraph does not apply to administrative rulings of general application and judicial decisions.

ARTICLE 28.4

Enquiries and provision of information

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations with respect to any matter covered by this Agreement.

2. On request of a Party, the other Party shall promptly provide information and respond to enquiries pertaining to any laws or regulations, whether in force or planned, with respect to any matter covered by this Agreement, unless a specific mechanism is established under another Chapter of this Agreement.

ARTICLE 28.5

Administrative proceedings

1. Each Party shall administer all laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement in an objective, impartial and reasonable manner.

2. If administrative proceedings relating to particular persons, goods or services of the other Party are initiated in respect of the application of laws, regulations, procedures or administrative rulings of general application referred to in paragraph 1, each Party shall:

(a) endeavour to provide persons who are directly affected by administrative proceedings with reasonable notice, in accordance with its laws and regulations, when proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issue in question; and

(b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision to the extent that time, the nature of the proceedings and the public interest permit.

ARTICLE 28.6

Review and appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, the correction of administrative decisions with respect to any matter covered by this Agreement.

2. Each Party shall ensure that its judicial, arbitral or administrative tribunals carry out procedures for appeal or review in a non-discriminatory and impartial manner. Such tribunals shall be impartial and independent of the authority entrusted with administrative enforcement powers, and shall not have any interest in the outcome of the matter.

3. With respect to the tribunals or procedures referred to in paragraph 1, each Party shall ensure that the parties before such tribunals or to such proceedings are provided with:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of records or, where required by its law, the records compiled by the relevant authority.

4. Each Party shall ensure that the decision referred to in subparagraph (b) of paragraph 3 is implemented by the authority entrusted with administrative enforcement powers, subject to appeal or further review as provided for in its laws and regulations.

ARTICLE 28.7

Relation to other Chapters

The provisions set out in this Chapter apply in addition to the specific rules set out in other Chapters.

# CHAPTER 29

# GOOD REGULATORY PRACTICES

## ARTICLE 29.1

### Scope

1. This Chapter applies to regulatory measures adopted or initiated by regulatory authorities in respect to any matter covered by this Agreement.

2. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States.

## ARTICLE 29.2

### General principles

1. The Parties recognise the importance of:

(a) using good regulatory practices in the process of planning, designing, issuing, implementing, evaluating and reviewing regulatory measures for the purpose of achieving domestic policy objectives; and

(b) maintaining and enhancing the benefits of this Agreement in facilitating trade in goods and services and increasing investment between the Parties.

2. Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles, including the precautionary principle, underlying its regulatory system.

3. Nothing in this Chapter shall be construed as requiring a Party to:

(a) deviate from domestic procedures for preparing and adopting regulatory measures;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve any particular regulatory outcome.

## ARTICLE 29.3

## Definitions

For the purposes of this Chapter:

(a) "regulatory authority" means:

(i) for the European Union: the European Commission; and

(ii) for Chile: any regulatory authority of the executive branch; and

(b) "regulatory measures" means:

(i) for the European Union:

(A) regulations and directives, as provided for in Article 288 of the Treaty on the Functioning of the European Union; and

(B) implementing and delegated acts, as provided for in Article 290 and Article 291 Treaty on the Functioning of the European Union, respectively; and

(ii) for Chile: laws and decrees of general application that are adopted by the regulatory authorities compliance with which is mandatory[1].

ARTICLE 29.4

Internal coordination of regulatory development

Each Party shall maintain internal coordination or review processes or mechanisms for the preparation, evaluation and review of regulatory measures. Such processes or mechanisms should seek, *inter alia*, to:

(a) foster good regulatory practices, including those set out in this Chapter;

(b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;

1 According to paragraph II.1 of presidential instruction N° 3 of 2019 and its modifications.

(c) ensure compliance with the international trade obligations of the Party; and

(d) promote the consideration of the impact of the regulatory measures under preparation, including the impact on small and medium-sized enterprises.

ARTICLE 29.5

Transparency of the regulatory processes and mechanisms

Each Party shall make publicly available descriptions, in accordance with its respective rules and procedures, of the processes and mechanisms used by its regulatory authority to prepare, evaluate or review regulatory measures. Those descriptions shall refer to relevant guidelines, rules or procedures, including those allowing the public to provide comments.

ARTICLE 29.6

Early information on planned regulatory measures

1. Each Party shall endeavour to publish on an annual basis, in accordance with its respective rules and procedures, information on planned major[1] regulatory measures.

2. With respect to each major regulatory measure referred to in paragraph 1, each Party shall endeavour to make publicly available, in a timely manner:

(a) a brief description of its scope and objectives; and

[1] The regulatory authority of each Party may determine what constitutes a major regulatory measure for the purposes of its obligations under this Chapter.

(b) if available, the estimated timing for its adoption, including, where applicable, opportunities for public consultations.

ARTICLE 29.7

Public consultations

1. When preparing a major regulatory measure, each Party shall, if applicable, in accordance with its respective rules and procedures:

(a) publish a draft regulatory measure or consultation documents providing sufficient details about the regulatory measure under preparation to allow any person[1] to assess whether and how the person's interests might be significantly affected;

(b) offer reasonable opportunities for any person, on a non-discriminatory basis, to provide comments; and

(c) consider the comments received.

2. The regulatory authority of each Party shall endeavour to make use of electronic means of communication and seek to maintain a dedicated electronic portal for the purpose of providing information and receiving comments related to public consultations.

[1] For greater certainty, this paragraph does not prevent a Party from undertaking targeted consultations with interested persons under conditions defined by its rules and procedures.

3. The regulatory authority of each Party shall endeavour to make publicly available a summary of the results of the consultations or any comments received, except to the extent necessary to protect confidential information or withhold personal data or inappropriate content.

ARTICLE 29.8

Impact assessment

1. Each Party shall promote the carrying out by its regulatory authority, in accordance with the applicable rules and procedures, of an impact assessment of the major regulatory measures it is preparing.

2. When carrying out an impact assessment, the regulatory authority of each Party shall promote processes and mechanisms that consider the following factors:

(a) the need for the regulatory measure, including the nature and the significance of the problem the regulatory measure is intended to address;

(b) feasible and appropriate regulatory and non-regulatory alternatives, if any, that would achieve the Party's public policy objective, including the option of not regulating;

(c) to the extent possible and relevant, the potential social, economic and environmental impact of those alternatives, including on international trade and on small and medium-sized enterprises; and

(d) how the options under consideration relate to relevant international standards, if any, including the reason for any divergence, where appropriate.

3. With respect to any impact assessment of a regulatory measure that a regulatory authority has carried out, that regulatory authority shall prepare a final report detailing the factors it considered in its assessment and the relevant findings. Such report shall be made publicly available when the regulatory measure concerned is made publicly available.

ARTICLE 29.9

Retrospective evaluation

The Parties recognise the positive contribution of periodic retrospective evaluations of existing regulatory measures that are in effect to reducing unnecessary regulatory burden, including on small and medium-sized enterprises, and to achieving public policy objectives more effectively. The Parties shall endeavour to promote the use of periodic retrospective evaluations in their regulatory systems.

ARTICLE 29.10

Regulatory register

Each Party shall ensure that regulatory measures that are in effect are published in a designated register that identifies regulatory measures by topic and that is publicly available on a single and freely accessible website. The website should allow searches for regulatory measures by citations or by word. Each Party shall periodically update its register.

ARTICLE 29.11

Cooperation and exchange of information

The Parties may cooperate in order to facilitate the implementation of this Chapter. That cooperation may include the organisation of any relevant activities to strengthen cooperation between their regulatory authorities and the exchange of information on the regulatory practices set out in this Chapter.

ARTICLE 29.12

Contact points

Each Party shall designate a contact point to facilitate the exchange of information between the Parties, within one month of the date of entry into force of this Agreement.

ARTICLE 29.13

Non-application of dispute settlement

Chapter 31 does not apply to this Chapter.

# CHAPTER 30

# SMALL AND MEDIUM-SIZED ENTERPRISES

## ARTICLE 30.1

### Objectives

The Parties recognise the importance of small and medium-sized enterprises ("SMEs") in their bilateral trade and investment relations and affirm their commitment to enhance the ability of SMEs to benefit from this Agreement.

## ARTICLE 30.2

### Information sharing

1. Each Party shall establish or maintain a publicly accessible SMEs-specific website that contains information regarding this Agreement, including:

(a) a summary of this Agreement; and

(b) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that each Party considers to be relevant to SMEs of both Parties; and

(ii) any additional information that the Party considers would be useful for SMEs interested in benefitting from the opportunities provided for by this Agreement.

2. Each Party shall include on the website provided for in paragraph 1 an internet link to the:

(a) text of this Agreement, including Annexes and Appendices thereto, in particular tariff schedules, and product-specific rules of origin;

(b) equivalent website of the other Party; and

(c) websites of its own authorities that the Party considers would provide useful information to persons interested in trading and doing business in that Party.

3. Each Party shall include on the website provided for in paragraph 1 an internet link to websites of its own authorities with information related to the following:

(a) customs regulations and procedures for importation, exportation and transit as well as relevant forms, documents and other information required;

(b) regulations and procedures concerning intellectual property rights, including geographical indications;

(c) technical regulations including, where necessary, obligatory conformity assessment procedures and links to lists of conformity assessment bodies, in the cases where third party conformity assessment is obligatory, as provided for in Chapter 9;

(d) sanitary and phytosanitary measures relating to importation and exportation as provided for in Chapter 6;

(e) rules on public procurement and a database containing public procurement notices and other relevant provisions of Chapter 21;

(f) company registration procedures; and

(g) other information which the Party considers may be of assistance to SMEs.

4. Each Party shall include on the website provided for in paragraph 1 an internet link to a database that is electronically searchable by Harmonized System code and that includes the following information with respect to access to its market:

(a) rates of customs duties and quotas, including most-favoured-nation customs duty rates, rates concerning non most-favoured-nation countries and preferential rates and tariff rate quotas;

(b) excise duties;

(c) taxes (such as value added tax);

(d) customs or other fees, including other product-specific fees;

(e) rules of origin as provided for in Chapter 3;

(f) duty drawback, deferral, or other types of relief that reduce, refund, or waive customs duties;

(g) criteria used to determine the customs value of the good;

(h) other tariff measures;

(i) information needed for import procedures; and

(j) information related to non-tariff measures or regulations.

5. Each Party shall regularly, or when requested by the other Party, update the information and links referred to in paragraphs 1 to 4 that it maintains on its website to ensure they are up-to-date and accurate.

6. Each Party shall ensure that the information referred to in this Article is presented in an adequate manner for the use of SMEs. Each Party shall endeavour to make such information available in English.

7. A Party shall not apply any fee for access to the information provided pursuant to paragraphs 1 to 4 for any person of a Party.

ARTICLE 30.3

SMEs contact points

1. Each Party shall communicate to the other Party its SMEs contact point that will carry out the functions listed in this Article. A Party shall notify the other Party promptly of any change in the details of those contact points.

2. The SMEs contact points shall:

(a) ensure that SMEs' needs are taken into account in the implementation of this Agreement so that SMEs of both Parties can take advantage of new opportunities under this Agreement;

(b) ensure that the information referred to in Article 30.2 is up-to-date and relevant for SMEs; either Party may, through the SMEs contact point, suggest additional information that the other Party may include in the information to be provided in accordance with Article 30.2;

(c) examine any matter relevant to SMEs in connection with the implementation of this Agreement, including:

(i) exchanging information to assist the Trade Committee in its tasks of monitoring and implementing the SMEs–related aspects of this Agreement;

(ii) assisting Sub-Committees and contact points established by this Agreement, in considering matters of relevance to SMEs;

(d) report periodically on their activities, jointly or individually, to the Trade Committee for its consideration; and

(e) consider any other matter arising under this Agreement pertaining to SMEs as the Parties may agree.

3. SMEs contact points shall meet as necessary and shall carry out their work through the communication channels agreed by the Parties, which may include electronic mail, video-conferencing or other means.

4. SMEs contact points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their activities.

ARTICLE 30.4

Non-application of dispute settlement

Chapter 31 does not apply to this Chapter.

# CHAPTER 31

# DISPUTE SETTLEMENT

## SECTION A

## OBJECTIVE AND SCOPE

### ARTICLE 31.1

### Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to reaching a mutually agreed solution.

### ARTICLE 31.2

### Scope

This Chapter applies with respect to any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as "covered provisions"), unless otherwise provided for in this Agreement.

ARTICLE 31.3

Definitions

For the purposes of this Chapter and Annexes 31-A and 31-B:

(a) "complaining Party" means the Party that requests the establishment of a panel pursuant to Article 31.5;

(b) "mediator" means an individual who has been selected as mediator in accordance with Article 31.27;

(c) "panel" means a panel established pursuant to Article 31.6;

(d) "panellist" means a member of a panel; and

(e) "Party complained against" means the Party that is alleged to be in breach of a covered provision.

SECTION B

CONSULTATIONS

ARTICLE 31.4

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 31.2 by entering into consultations in good faith with a view to reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of delivery of the request for consultations. Consultations shall be held within 30 days after the date of delivery of the request for consultations and shall take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded 46 days after the date of delivery of the request for consultations, unless the Parties agree to continue the consultations.

4. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods or services, shall be held within 15 days after the date of delivery of the request for consultations. The consultations shall be deemed concluded 23 days after the date of delivery of the request for consultations, unless the Parties agree to continue the consultations.

5. During consultations, each Party shall provide sufficient factual information so as to allow a complete examination of the manner in which the measure at issue could affect the application of this Agreement. Each Party shall endeavour to ensure the participation of personnel of its competent governmental authorities who have expertise in the matter which is subject to the consultations.

6. Consultations and, in particular, all information designated as confidential and positions taken by a Party during consultations, shall be confidential and without prejudice to the rights of each Party in any further proceedings.

7. If the Party to which the request for consultations is made does not respond to the request within 10 days after the date of its delivery, if consultations are not held within the timeframes laid down in paragraph 3 or 4, if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that requested consultations may have recourse to Article 31.5.

## SECTION C

## PANEL PROCEDURES

### ARTICLE 31.5

### Initiation of panel procedures

1. If the Parties fail to resolve the matter through consultations as provided for in Article 31.4, the Party that requested consultations may request the establishment of a panel.

2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party. The complaining Party shall identify the measure at issue in its request, specify the covered provisions that it considers applicable, and explain how that measure constitutes a breach of the covered provisions in a manner that is sufficient to present the legal basis for the complaint clearly.

## ARTICLE 31.6

### Establishment of a panel

1. A panel shall be composed of three panellists.

2. Within 14 days after the date of delivery to the Party complained against of the request for the establishment of a panel, the Parties shall consult with a view to agreeing on the composition of the panel.

3. If the Parties do not agree on the composition of the panel within the time period provided for in paragraph 2 of this Article, each Party shall appoint a panellist from the sub-list of that Party established under Article 31.8(1) within 10 days after the date of expiry of the time period provided for in paragraph 2 of this Article. If the Party complained against does not appoint a panellist from its sub-list within that time period, the co-chair of the Trade Committee of the complaining Party shall select by lot, within five days after the date of expiry of that time period, the panellist from the sub-list of that Party. The co-chair of the Trade Committee of the complaining Party may delegate such selection by lot of the panellist.

4. If the Parties do not agree on the chairperson of the panel within the time period provided for in paragraph 2 of this Article, the co-chair of the Trade Committee of the complaining Party shall select by lot, within 10 days after the date of expiry of that time period, the chairperson of the panel from the sub-list of chairpersons established under subparagraph (c) of Article 31.8(1). The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot of the chairperson of the panel.

5. The panel shall be deemed to be established 15 days after the date on which the three selected panellists have notified the Parties of their acceptance of the appointment in accordance with Annex 31-A, unless the Parties agree otherwise. Each Party shall promptly make public the date of establishment of the panel.

6. If any of the lists provided for in Article 31.8 have not been established or do not contain sufficient names at the time a request is made pursuant to paragraph 3 or 4 of this Article, the panellists shall be selected by lot from the individuals who have been formally proposed by one Party or both Parties, in accordance with Annex 31-A.

## ARTICLE 31.7

## Choice of forum

1. If a dispute arises concerning a particular measure in alleged breach of an obligation under this Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has selected the forum and initiated dispute settlement procedures under this Section or under another international agreement with respect to the particular measure referred to in paragraph 1, that Party shall not initiate dispute settlement procedures under that other international agreement or this Section, respectively, unless the forum first selected fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) dispute settlement procedures under this Section are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 31.5;

(b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement; and

(c) dispute settlement procedures under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations pursuant to this Section.

ARTICLE 31.8

Lists of panellists

1. The Trade Committee shall, no later than one year after the date of entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by Chile; and

(c) one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson of the panel.

2. Each sub-list shall include at least five individuals. The Trade Committee shall ensure that the list is always maintained at that minimum number of individuals.

3. The Trade Committee may establish additional lists of individuals with expertise in specific sectors covered by this Agreement. If the Parties so agree, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 31.6.

ARTICLE 31.9

Requirements for panellists

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade and other matters covered by this Agreement;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with Annex 31-B.

2. The chairperson shall, in addition to fulfilling the requirements set out in paragraph 1, have experience in dispute settlement procedures.

3. In view of the subject matter of a particular dispute, the Parties may agree to derogate from the requirements listed in subparagraph (a) of paragraph 1.

ARTICLE 31.10

Functions of the panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and conclusions that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 31.11

Terms of reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of the Interim Agreement on Trade between the European Union and the Republic of Chile, cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with the covered provisions of that Agreement and to deliver a report in accordance with Article 31.13 of that Agreement".

2. If the Parties agree on terms of reference other than those set out in paragraph 1, they shall notify the panel of the agreed terms of reference within the time period set out in paragraph 1.

ARTICLE 31.12

Decision on urgency

1. If a Party so requests, the panel shall decide, within 10 days after the date of its establishment, whether the case concerns a matter of urgency.

2. In cases of urgency, the applicable time periods set out in this Section shall be half of the time set out therein, except for the time periods referred to in Articles 31.6 and 31.11.

ARTICLE 31.13

Interim and final report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of establishment of the panel. If the panel considers that that deadline cannot be met, the chairperson of the panel shall notify the Parties, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall under no circumstances deliver its interim report later than 120 days after the date of establishment of the panel.

2. Each Party may deliver to the panel a written request to review precise aspects of the interim report within 10 days after the date of its delivery. A Party may comment on the other Party's request within six days after the date of delivery of that request.

3. If no request is delivered pursuant to paragraph 2, the interim report shall become the final report.

4. The panel shall deliver its final report to the Parties within 120 days after the date of establishment of the panel. If the panel considers that that deadline cannot be met, the chairperson of the panel shall notify the Parties, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall under no circumstances deliver its final report later than 150 days after the date of establishment of the panel.

5. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties. The panel shall set out the following in the interim and the final report:

(a) a descriptive section containing a summary of the arguments of the Parties and of the comments referred to in paragraph 2;

(b) its findings on the facts of the case and on the applicability of the relevant covered provisions;

(c) its findings on whether the measure at issue is or is not in conformity with the relevant covered provisions; and

(d) the reasons for the findings referred to in subparagraphs (b) and (c).

6. The final report shall be final and binding on the Parties.

ARTICLE 31.14

Compliance measures

1. The Party complained against shall take any measure necessary to comply promptly with the final report in order to bring itself in compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after the date of delivery of the final report, notify the complaining Party of any measure which it has taken or envisages to take to comply with the final report.

ARTICLE 31.15

Reasonable period of time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after the date of delivery of the final report, notify the complaining Party of the length of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on the length of the reasonable period of time to comply with the final report.

2. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, no earlier than 20 days after the date of delivery of the notification referred to in paragraph 1, request, in writing, the original panel to determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days after the date of delivery of the request.

3. The Party complained against shall, at least one month before the expiry of the reasonable period of time, notify the complaining Party of its progress in complying with the final report.

4. The Parties may agree to extend the reasonable period of time.

## ARTICLE 31.16

## Compliance review

1. The Party complained against shall, no later than on the date of expiry of the reasonable period of time referred to in Article 31.15, notify the complaining Party of any measure that it has taken to comply with the final report.

2. When the Parties disagree on the existence or the consistency with the covered provisions of any measure taken to comply, the complaining Party may deliver a request, in writing, to the original panel to decide on the matter. The request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner that is sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 46 days after the date of delivery of the request.

ARTICLE 31.17

Temporary remedies

1. On request of, and after consultations with, the complaining Party, the Party complained against shall present an offer for temporary compensation if:

(a) the Party complained against notifies the complaining Party that it is not possible to comply with the final report;

(b) the Party complained against fails to notify any measure taken to comply or which it envisages to take to comply within the time period referred to in Article 31.14, or fails to notify any measure taken to comply before the date of expiry of the reasonable period of time referred to in Article 31.15;

(c) the panel finds that no measure taken to comply exists, in accordance with Article 31.16; or

(d) the panel finds that the measure taken to comply is inconsistent with the covered provisions, in accordance with Article 31.16.

2. In any of the circumstances referred to in subparagraph (a), (b), (c) or (d) of paragraph 1, the complaining Party may notify the Party complained against that it intends to suspend the obligations set out in the covered provisions if:

(a) the complaining Party decides not to make a request pursuant to paragraph 1; or

(b) the complaining Party has made a request pursuant to paragraph 1 and the Parties do not agree on the temporary compensation within 20 days after the date of expiry of the reasonable period of time referred to in Article 31.15 or the delivery of the panel decision pursuant to Article 31.16.

3. The complaining Party may suspend the obligations 10 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against has made a request pursuant to paragraph 6.

4. The level of the suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation. The notification referred to in paragraph 2 shall specify the level of the intended suspension of obligations.

5. In considering which obligations to suspend, the complaining Party should first seek to suspend the obligations in the same sector or sectors as those affected by the measure which the panel has found to be inconsistent with the covered provisions. The suspension of obligations may be applied to a sector or sectors covered by this Agreement other than those in which the panel has found nullification or impairment, in particular if the complaining Party is of the view that such suspension in the other sector or sectors is practicable or effective in inducing compliance.

6. If the Party complained against considers that the notified level of intended suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may, before the expiry of the time period set out in paragraph 3, deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision on the level of the suspension of obligations to the Parties within 30 days after the date of the request. The complaining Party shall not suspend any obligations until the panel has delivered its decision. The suspension of obligations shall be consistent with that decision.

7. The suspension of obligations, or the compensation referred to in this Article, shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 31.32;

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

ARTICLE 31.18

Review of measures taken to comply after temporary remedies

1. The Party complained against shall notify the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of the cases referred to in paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days after the date of delivery of that notification. In cases where compensation has been applied, and with the exception of the cases referred to in paragraph 2, the Party complained against may terminate the application of such compensation within 30 days after the date of delivery of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 brings the Party complained against into conformity with the covered provisions within 30 days after the date of delivery of that notification, the complaining Party shall deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 46 days after the date of the delivery of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations or compensation, as the case may be, shall be terminated. If relevant, the complaining Party shall adjust the level of suspension of obligations or of compensation in light of the panel's decision.

3. If the Party complained against considers that the level of suspension implemented by the complaining Party exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel to decide on the matter.

ARTICLE 31.19

Replacement of panellists

If during panel procedures under this Section, a panellist is unable to participate, withdraws or needs to be replaced because he or she does not comply with the requirements of Annex 31-B, a new panellist shall be appointed in accordance with Article 31.6. The time period for the delivery of a report or a decision referred to in this Section shall be extended for the time necessary for the appointment of the new panellist.

ARTICLE 31.20

Rules of procedure

1. Panel procedures under this Section shall be governed by this Chapter and Annex 31-A.

2. Any hearing of the panel shall be open to the public unless otherwise provided for in Annex 31-A.

ARTICLE 31.21

Suspension and termination

1. On a joint request of the Parties, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months.

2. The panel shall resume its work before the end of the suspension period on a written request of both Parties, or at the end of the suspension period on a written request of either Party. The requesting Party shall notify the other Party accordingly. If a Party does not request the resumption of the work of the panel at the end of the suspension period, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

3. If the work of the panel is suspended pursuant to this Article, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended.

ARTICLE 31.22

Right to seek information

1. On request of a Party or upon its own initiative, the panel may seek, from the Parties, information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

2. On request of a Party or upon its own initiative, the panel may seek information it considers necessary and appropriate from any source. The panel also has the right to seek the opinion, including information and technical advice, of experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, if applicable.

3. The panel shall consider *amicus curiae* submissions from natural persons of a Party or juridical persons established in a Party in accordance with Annex 31-A.

4. Any information obtained by the panel pursuant to this Article shall be disclosed to the Parties, and the Parties may provide comments on that information.

ARTICLE 31.23

Rules of interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties.

2. The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

3. Reports and decisions of the panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 31.24

Reports and decisions of the panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If that is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of panellists be disclosed.

2. Each Party shall make its submissions and the reports and decisions of the panel publicly available, subject to the protection of confidential information.

3. The reports and decisions of the panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations for persons.

4. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with Annex 31-A.

SECTION D

MEDIATION MECHANISM

ARTICLE 31.25

Objective

1. The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

2. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice from and proposed solutions by the mediator.

ARTICLE 31.26

Initiation of the mediation procedure

1. A Party ("the requesting Party") may, at any time, request the other Party ("the responding Party") in writing to enter into a mediation procedure with respect to any measure of the responding Party allegedly adversely affecting trade or investment between the Parties.

2. The request referred to in paragraph 1 shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:

(a) identify the measure at issue;

(b) provide a statement of the adverse effects that the requesting Party considers the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

3. The responding Party shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days after the date of its delivery; otherwise the request shall be regarded as rejected.

ARTICLE 31.27

Selection of the mediator

1. The Parties shall endeavour to agree on a mediator within 14 days after the date of initiation of the mediation procedure.

2. If the Parties are unable to agree on the mediator within the time period laid down in paragraph 1 of this Article, either Party may request the co-chair of the Trade Committee of the requesting Party to select the mediator by lot, within five days after the date of the request, from the sub-list of chairpersons established pursuant to subparagraph (c) of Article 31.8(1). The co-chair of the Trade Committee of the requesting Party may delegate such selection by lot of the mediator.

3. If the sub-list of chairpersons referred to in subparagraph (c) of Article 31.8(1) has not been established at the time a request is made pursuant to Article 31.26, the mediator shall be selected by lot from the individuals who have been formally proposed by one Party or both Parties for that sub-list.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediator shall comply with Annex 31-B.

ARTICLE 31.28

Rules of the mediation procedure

1. Within 10 days after the date of the appointment of the mediator, the requesting Party shall deliver to the mediator and to the responding Party a detailed written description of its concerns, in particular relating to the operation of the measure at issue and its possible adverse effects on trade or investment. Within 20 days after the date of delivery of that description, the responding Party may deliver written comments on that description. A Party may include any information that it deems relevant in its description or comments.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure at issue and its possible adverse effects on trade or investment. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the responding Party or, by mutual agreement of the Parties, in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days after the date of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, in particular if the measure relates to perishable goods or seasonal goods or services.

6. On request of either Party, the mediator shall deliver a draft factual report to the Parties, providing:

(a) a brief summary of the measure at issue;

(b) the procedures followed; and

(c) if applicable, any mutually agreed solution reached, including possible interim solutions.

7. The mediator shall allow the Parties 15 days after the date of the delivery of the draft factual report to comment on the draft factual report. After considering the comments received from the Parties, the mediator shall, within 15 days of the receipt of the comments, deliver a final factual report to the Parties. The draft and final factual reports shall not include any interpretation of this Agreement.

8. The mediation procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the Parties, on the date of the notification thereof to the mediator;

(b) by mutual agreement of the Parties at any stage of the procedure, on the date of the notification of that agreement to the mediator;

(c) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of the notification of that declaration to the Parties; or

(d) by a written declaration of a Party after having explored mutually agreed solutions under the mediation procedure and after having considered any advice from and proposed solutions by the mediator, on the date of the notification of that declaration to the mediator and the other Party.

ARTICLE 31.29

Confidentiality

Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. A Party may disclose to the public the fact that a mediation is taking place.

ARTICLE 31.30

Relationship to dispute settlement procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections B and C or dispute settlement procedures under any other agreement.

2. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this Agreement or any other agreement, and a panel shall not take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered under Article 31.28(2);

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, a mediator shall not serve as a panellist in dispute settlement procedures under this Agreement or under any other agreement involving the same matter for which he or she has been a mediator.

SECTION E

COMMON PROVISIONS

ARTICLE 31.31

Request for information

1. Before a request for consultations or mediation is made pursuant to Article 31.4 or 31.26 respectively, a Party may request information from the other Party regarding a measure allegedly adversely affecting trade or investment between the Parties. The Party to which such request is made shall, within 20 days after the date of delivery of the request, deliver a written response with its comments on the requested information.

2. If the Party to which the request is made considers it will not be able to deliver a response within 20 days after the date of delivery of the request, it shall promptly notify the other Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

3. A Party is normally expected to request information pursuant to paragraph 1 of this Article before a request for consultations or mediation is made pursuant to Article 31.4 or 31.26 respectively.

ARTICLE 31.32

Mutually agreed solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 31.2.

2. If a mutually agreed solution is reached during the panel or mediation procedure, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, respectively. Upon such notification, the panel or mediation procedure shall be terminated.

3. Each Party shall take the measures necessary to implement the mutually agreed solution immediately or within the agreed time period, as applicable.

4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 31.33

Time periods

1. All time periods set out in this Chapter shall be counted from the day following the act to which they refer.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. Under Section C, the panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 31.34

Costs

1. Each Party shall bear its own expenses derived from the participation in the panel or mediation procedure.

2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and of the mediator. The remuneration of the panellists shall be determined in accordance with Annex 31-A. The rules on the remuneration of the panellists laid down in Annex 31-A shall apply to mediators *mutatis mutandis*.

ARTICLE 31.35

Amendment of Annexes

The Trade Council may adopt a decision to amend Annexes 31-A and 31-B, pursuant to subparagraph (a) of Article 33.1(6).

CHAPTER 32

EXCEPTIONS

ARTICLE 32.1

General exceptions

1. For the purposes of Chapters 2, 4, 8, 10[1], 19 and 22 of this Agreement, Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

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 investment liberalisation or trade in services, nothing in Chapter 8, Chapters 10[2] to 20[3] or Chapter 22 of this Agreement shall be construed as preventing the adoption or enforcement by either Party of measures:

(a) necessary to protect public security or public morals or to maintain public order[4];

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1 This provision does not apply to Article 10.7.

2 This provision does not apply to Article 10.7.

3 For greater certainty, nothing in this Article shall be construed as limiting the rights set out in Annex 20.

4 The exceptions set out in this subparagraph may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(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 this Agreement, including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of privacy in relation to the processing and dissemination of personal data, and the protection of the confidentiality of individual records and accounts; or

(iii) safety.

3. For greater certainty, the Parties understand that, to the extent that such measures are inconsistent with the provisions of the Chapters of this Agreement referred to in paragraphs 1 and 2 of this Article:

(a) the measures referred to in subparagraph (b) of Article XX of GATT 1994 and in subparagraph (b) of paragraph 2 of this Article include environmental measures which are necessary to protect human, animal or plant life or health;

(b) subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

(c) measures taken to implement multilateral environmental agreements can fall under subparagraph (b) or (g) of Article XX of GATT 1994 or under subparagraph (b) of paragraph 2 of this Article.

4. Before a Party applies any measure provided for in subparagraphs (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If an acceptable solution is not reached within 30 days of the provision of the relevant information, the Party intending to apply the measure may do so. Where exceptional and critical circumstances requiring immediate action prevent the prior provision and examination of information, the Party intending to apply the measures may immediately apply any precautionary measures necessary to address the situation. That Party shall inform the other Party immediately of the application of such measures.

ARTICLE 32.2

Security exceptions

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or provide access to any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, as carried out directly or indirectly for the purposes of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action pursuant to its obligations under the Charter of the United Nations for the maintenance of international peace and security.

2. A Party shall inform the Trade Committee to the fullest extent possible of any action it takes under subparagraphs (b) and (c) of paragraph 1 and of the termination of that action.

ARTICLE 32.3

Taxation

1. For the purposes of this Article:

(a) "residence" means residence for tax purposes;

(b) "tax agreement" means an agreement on the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which any Member State, the European Union or Chile is a party; and

(c) "taxation measure" means a measure applying the tax law of the European Union, of any Member State, or of Chile.

2. This Agreement applies to taxation measures only in so far as their application is necessary to give effect to the provisions of this Agreement.

3. Nothing in this Agreement shall affect the rights and obligations of either the European Union, or its Member States or Chile under any tax agreement. In the event of any inconsistency between this Agreement and any tax agreement, the tax agreement shall prevail to the extent of the inconsistency. With regard to a tax agreement between the European Union or its Member States and Chile, the relevant competent authorities, of the European Union or of its Member States, on the one hand, and of Chile, on the other hand, under this Agreement and that tax agreement, shall jointly determine whether an inconsistency exists between this Agreement and that tax agreement.

4. Any most-favoured-nation obligation under this Agreement shall not apply with respect to an advantage accorded by the European Union, its Member States or Chile pursuant to a tax agreement.

5. 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 and investment, nothing in this Agreement shall be construed as preventing the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

(a) distinguishes between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested; or

(b) aims at preventing the avoidance or evasion of taxes under a tax agreement or fiscal law of that Party.

ARTICLE 32.4

Disclosure of information

1. Nothing in this Agreement shall be construed as requiring a Party to make available confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 31. In such cases, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits information considered confidential under its law to the Trade Council, Trade Committee, Sub-Committees or other bodies established under this Agreement, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 32.5

WTO waivers

If an obligation under this Agreement is substantially equivalent to an obligation under the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to Article IX of the WTO Agreement shall be deemed to be in conformity with the substantively equivalent obligation under this Agreement.

# CHAPTER 33

# INSTITUTIONAL AND FINAL PROVISIONS

## SECTION A

## INSTITUTIONAL PROVISIONS

### ARTICLE 33.1

### Trade Council

1. The Parties hereby establish a Trade Council. The Trade Council shall oversee the fulfilment of the objectives of this Agreement and supervise its implementation. It shall examine any matters arising within the framework of this Agreement.

2. The Trade Council shall meet within a year of the date of entry into force of this Agreement, and thereafter on a biennial basis, or as otherwise agreed by the Parties. The meetings of the Trade Council shall take place in person or by any technological means in accordance with its rules of procedure. Meetings that take place in person shall be held in Brussels and Santiago alternately. The agenda of a meeting of the Trade Council shall be established by the coordinators of this Agreement, pursuant to Article 33.3(2).

3. The Trade Council shall be composed of representatives of the Parties with responsibility for trade and investment matters. The Trade Council shall be co-chaired by a representative of each Party.

4. The Trade Council shall have the power to adopt decisions in the cases provided for in this Agreement and to make recommendations, in accordance with its rules of procedure. The Trade Council shall adopt its decisions and make recommendations by mutual agreement. Decisions shall be binding on the Parties, which shall take all necessary measures to implement those decisions[1]. Recommendations shall have no binding force.

5. The Trade Council shall establish its own rules of procedure and the rules of procedure of the Trade Committee at its first meeting.

6. The Trade Council may:

(a) adopt decisions to amend:

(i) the tariff schedules in Appendices 2-1 and 2-2 in order to accelerate tariff dismantling;

(ii) Chapter 3 and Annexes 3-A to 3-E;

(iii) Annexes 6-F and 6-G, and Appendix 6-E-1;

(iv) Annexes 9-A, 9-D, 9-E, and paragraph 1 of Annex 9-B;

[1] For greater certainty, Chile will implement any decisions adopted by the Trade Council through *acuerdos de ejecución* (executive agreements), in accordance with Chilean law.

(v) Annex 14-B;

(vi) Annex 22;

(vii) the definition of "subsidy" in Article 24.2(1) insofar as it relates to enterprises supplying services, with a view to incorporating the outcome of future discussions in the WTO or related plurilateral fora on that matter;

(viii) Annex 25-A as regards the references to the law applicable in the Parties;

(ix) Annex 25-B as regards the criteria to be included in the opposition procedure;

(x) Annex 25-C as regards the geographical indications;

(xi) Annexes 31-A and 31-B; and

(xii) any other provision, annex, appendix or protocol, the amendment of which is provided for in this Agreement;

(b) adopt decisions to issue interpretations of the provisions of this Agreement, which shall be binding on the Parties and all bodies established under this Agreement and the panels referred to in Chapters 26 and 31;

(c) delegate any of its functions to the Trade Committee, including the power to adopt decisions and to make recommendations;

(d) establish additional Sub-Committees and other bodies pursuant to Article 33.4(2); and

(e) if it deems it appropriate, establish the rules of procedure of the Sub-Committees and other bodies pursuant to Article 33.4(7).

## ARTICLE 33.2

## Trade Committee

1. The Parties hereby establish a Trade Committee. The Trade Committee shall assist the Trade Council in the performance of its functions.

2. The Trade Committee shall be responsible for the general implementation of this Agreement. The circumstance that a matter or issue is being considered by the Trade Committee shall not prevent the Trade Council from also dealing with it.

3. The Trade Committee shall meet within a year of the date of entry into force of this Agreement, and thereafter once a year, or as otherwise agreed by the Parties. The meetings of the Trade Committee shall take place in person or by any technological means in accordance with its rules of procedure. Meetings that take place in person shall be held in Brussels and Santiago alternately. The agenda of a meeting of the Trade Committee shall be established by the coordinators of this Agreement, pursuant to Article 33.3(2).

4. The Trade Committee shall be composed of representatives of the Parties with responsibility for trade and investment matters. The Trade Committee shall be co-chaired by a representative of each Party.

5. The Trade Committee shall have the power to adopt decisions in the cases provided for in this Agreement or when such power has been delegated to it by the Trade Council pursuant to subparagraph (c) of Article 33.1(6). The Trade Committee shall also have the power to make recommendations, including when that power has been delegated pursuant to subparagraph (c) of Article 33.1(6). The Trade Committee shall adopt its decisions and make recommendations by mutual agreement and in accordance with its rules of procedure. When exercising delegated functions, the Trade Committee shall adopt its decisions and make recommendations in accordance with the rules of procedure of the Trade Council. Decisions shall be binding on the Parties, which shall take all necessary measures to implement those decisions[1]. Recommendations shall have no binding force.

6. The Trade Committee shall:

(a) be responsible for the proper implementation of this Agreement; in this respect, and without prejudice to the rights established under Chapter 31, a Party may refer for discussion within the Trade Committee any issue relating to the application or interpretation of this Agreement;

(b) oversee the further elaboration the provisions of this Agreement as necessary and evaluate the results obtained from its application;

(c) seek appropriate ways of preventing and solving problems, which might otherwise arise in areas covered by this Agreement;

(d) supervise the work of all Sub-Committees established under Article 33.4; and

[1] For greater certainty, Chile will implement any decisions adopted by the Trade Committee through *acuerdos de ejecución* (executive agreements), in accordance with Chilean law.

(e) examine any effect on this Agreement of the accession of a new Member State to the European Union.

7. The Trade Committee may:

(a) establish additional Sub-Committees and other bodies pursuant to Article 33.4(2);

(b) adopt decisions to amend this Agreement pursuant to subparagraph (a) of Article 33.1(6) and to issue the interpretations referred to in subparagraph (b) of Article 33.1(6) in between meetings of the Trade Council, when the Trade Council cannot meet or as otherwise provided for in this Agreement; and

(c) establish the rules of procedure of the Sub-Committees and other bodies, if it deems so appropriate, pursuant to Article 33.4(7).

ARTICLE 33.3

Coordinators

1. Each Party shall appoint a coordinator for this Agreement, within 60 days of the date of entry into force of this Agreement, and notify the other Party of the contact details of that coordinator.

2. The coordinators shall jointly establish the agenda and conduct all other necessary preparations for the meetings of the Trade Council, the Trade Committee, and the Sub-Committees and other bodies established pursuant to Article 33.4. The coordinators shall follow-up on the decisions of the Trade Council and the Trade Committee, as appropriate.

ARTICLE 33.4

Sub-Committees and other bodies

1. The Parties hereby establish the following Sub-Committees:

(a) the Sub-Committee on Customs, Trade Facilitation and Rules of Origin;

(b) the Sub-Committee on Financial Services;

(c) the Sub-Committee on Intellectual Property;

(d) the Sub-Committee on Public Procurement;

(e) the Sub-Committee on Sanitary and Phytosanitary Measures;

(f) the Sub-Committee on Services and Investment;

(g) the Sub-Committee on Sustainable Food Systems;

(h) the Sub-Committee on Technical Barriers to Trade;

(i) the Sub-Committee on Trade in Goods; and

(j) the Sub-Committee on Trade and Sustainable Development.

2. The Trade Council or the Trade Committee may adopt a decision to establish an additional Sub-Committee or other body. The Trade Council or the Trade Committee may assign to a Sub-Committee or other body established pursuant to this paragraph tasks within their respective competence to assist in the performance of their respective functions and to address specific tasks or subject matters. The Trade Council or the Trade Committee may change the tasks assigned to, or dissolve, any Sub-Committee or other body established pursuant to this paragraph.

3. Sub-Committees and other bodies shall be composed of representatives of the Parties and shall be co-chaired by a representative of each Party.

4. Except as otherwise provided for in this Agreement or as otherwise agreed by the Parties, Sub-Committees shall meet within a year of their establishment and, thereafter, on request of either Party or of the Trade Council or the Trade Committee, at an appropriate level. Sub-Committees may also convene at their own initiative, subject to their respective rules of procedure. The meetings of the Sub-Committees shall take place in person or by any technological means in accordance with their respective rules of procedure. Meetings that take place in person shall be held in Brussels and Santiago alternately. The agenda of a meeting of the Sub-Committees and other bodies shall be established by the coordinators of this Agreement, pursuant to Article 33.3(2).

5. Except as otherwise provided for in this Agreement, Sub-Committees and other bodies shall report on their activities to the Trade Committee regularly, as well as on request of the Trade Committee.

6. The circumstance that a matter or issue is being considered by any of the Sub-Committees or other bodies shall not prevent the Trade Council or the Trade Committee from also dealing with it.

7. The Trade Council or the Trade Committee may establish rules of procedure of the Sub-Committees and other bodies, if it deems it appropriate. If the Trade Council or the Trade Committee does not establish such rules of procedure, the rules of procedure for the Trade Committee shall apply *mutatis mutandis*.

8. The Sub-Committees and other bodies may make recommendations, in accordance with their respective rules of procedure. The Sub-Committees and other bodies shall make recommendations by mutual agreement. Recommendations of the Sub-Committees and other bodies shall have no binding force.

ARTICLE 33.5

Participation of civil society

Each Party shall promote the participation of civil society in the implementation of this Agreement, in particular through interaction with the respective Domestic Consultative Group referred to in Article 33.6, and with the Civil Society Forum referred to in Article 33.7.

ARTICLE 33.6

Domestic Consultative Groups

1. Each Party shall create or designate a Domestic Consultative Group within two years of the date of entry into force of this Agreement. Each Domestic Consultative Group shall comprise a balanced representation of independent civil society organisations, including non-governmental organisations, trade unions, and business and employers' organisations. For that purpose, each Party shall establish its own appointment rules in order to determine the composition of the respective Domestic Consultative Group, providing opportunities of access to actors from different sectors. The membership of each Domestic Consultative Group shall be renewed at periodic intervals, in accordance with the appointment rules established pursuant to this paragraph.

2. Each Party shall meet with its respective Domestic Consultative Group at least once a year in order to discuss the implementation of this Agreement. Each Party may consider views or recommendations submitted by its respective Domestic Consultative Group.

3. In order to promote public awareness of its respective Domestic Consultative Group, each Party shall publish a list of the organisations participating in its respective Domestic Consultative Group, as well as its contact information.

4. The Parties shall promote interaction between the Domestic Consultative Groups, through appropriate means.

ARTICLE 33.7

Civil Society Forum

1. The Parties shall promote the regular organisation of a Civil Society Forum to conduct a dialogue on the implementation of this Agreement.

2. The Parties shall convene meetings of the Civil Society Forum by mutual agreement. When convening a meeting of the Civil Society Forum, each Party shall invite independent civil society organisations established in its territory, including the members of its respective Domestic Consultative Group referred to in Article 33.6. Each Party shall promote a balanced representation, allowing for the participation of non-governmental organisations, trade unions, and business and employers' organisations. Each organisation shall bear the costs associated with its participation in the Civil Society Forum.

3. Representatives of the Parties participating in the Trade Council or in the Trade Committee shall, as appropriate, take part in the meetings of the Civil Society Forum. The Parties shall, jointly or individually, publish any formal statements made at the Civil Society Forum.

SECTION B

FINAL PROVISIONS

ARTICLE 33.8

Territorial application

1. This Agreement applies:

(a) with respect to the European Union, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied, and under the conditions laid down in those Treaties; and

(b) with respect to Chile, to the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law[1] and the law of Chile[2].

References to "territory" in this Agreement shall be understood in accordance with this paragraph, except as otherwise expressly provided in this Agreement.

[1] For greater certainty, international law includes, in particular, the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

[2] For greater certainty, in case of an inconsistency between the law of Chile and international law, the latter shall prevail.

2. As regards the provisions concerning the tariff treatment of goods, including rules of origin and the temporary suspension of such treatment, this Agreement also applies to those areas of the customs territory of the European Union within the meaning of Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[1] that are not covered by subparagraph (a) of paragraph 1 of this Article.

ARTICLE 33.9

Entry into force

1. This Agreement shall enter into force on the first day of the third month following the date of the last notification by which the Parties inform each other of the completion of their respective internal procedures required for the entry into force of this Agreement.

2. Notifications made in accordance with paragraph 1 shall be sent, for the European Union, to the Secretary General of the Council of the European Union, and, for Chile, to the Ministry of Foreign Affairs.

[1] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1).

ARTICLE 33.10

Amendments

1. The Parties may agree, in writing, to amend this Agreement. Amendments shall enter into force in accordance with Article 33.9, *mutatis mutandis*.

2. Notwithstanding paragraph 1 of this Article, the Trade Council may adopt decisions to amend this Agreement in the cases referred to in subparagraph (a) of Article 33.1(6) and in Article 33.13(4).

ARTICLE 33.11

Other agreements

1. Part IV of the Association Agreement, including any decisions taken under its Institutional Framework, shall cease to have effect upon the entry into force of this Agreement.

2. This Agreement replaces Part IV of the Association Agreement, including any decisions taken under its Institutional Framework. References to the Association Agreement, including any decisions taken under its Institutional Framework, in all other agreements and understandings between the Parties shall be construed as referring to this Agreement.

3. Existing agreements falling within the scope of this Agreement shall cease to have effect upon the entry into force of this Agreement.

4. The Agreement on Trade in Wines in Annex V to the Association Agreement ("Wine Agreement") and the Agreement on Trade in Spirit Drinks and Aromatised Drinks in Annex VI to the Association Agreement ("Spirits Agreement")[1], including all appendices, are incorporated into and made part of this Agreement, *mutatis mutandis* and as follows:

(a) references in the Wine Agreement and the Spirits Agreement to the dispute settlement mechanism referred to in Part IV of the Association Agreement, as well as to the Code of Conduct referred to in Annex XVI to the Association Agreement, are to be read as referring to the dispute settlement mechanism provided for in Chapter 31 and to the Code of Conduct provided for in Annex 31-B, respectively, of this Agreement;

(b) references in the Wine Agreement and the Spirits Agreement to the Community are to be read as referring to the European Union;

(c) references in the Wine Agreement and the Spirits Agreement to the Association Committee established by the Association Agreement are to be read as referring to the Trade Committee established pursuant to Article 33.2 of this Agreement;

(d) references in the Wine Agreement and the Spirits Agreement to Annex IV of the Association Agreement are to be read as references to Chapter 6 of this Agreement;

[1] For greater certainty, the date of signature and the date of entry into force of the Wine Agreement and the Spirits Agreement are the same as the date of signature and the date of entry into force of the Association Agreement.

(e) for greater certainty, the Joint Committee established by Article 30 of the Wine Agreement and the Joint Committee established by Article 17 of the Spirits Agreement are to remain in place, and are to continue exercising the functions indicated in Article 29 of the Wine Agreement and in Article 16 of the Spirits Agreement; and

(f) for greater certainty, Article 1.5(2) of this Agreement applies to the Wine Agreement and to the Spirits Agreement.

5. Any decision taken under the Institutional Framework of the Association Agreement concerning the Wine Agreement or the Spirits Agreement that is in force upon the entry into force of this Agreement shall be deemed to have been adopted by the Trade Committee, established pursuant to Article 33.2 of this Agreement.

6. The Parties may amend the appendices to the Wine Agreement and to the Spirits Agreement, as incorporated, by exchange of letters[1].

[1] For greater certainty, Chile will implement any amendments to the Wine Agreement and to the Spirits Agreement as incorporated into this Agreement through *acuerdos de ejecución* (executive agreements), in accordance with Chilean law.

ARTICLE 33.12

Annexes, appendices, protocols, notes and footnotes

The annexes, appendices, protocols, notes and footnotes to this Agreement shall form an integral part thereof.

ARTICLE 33.13

Future accessions to the European Union

1. The European Union shall notify Chile of any request for accession of a third country to the European Union.

2. The European Union shall notify Chile of the date of the signature and of the entry into force of the accession treaty of a new Member State to the European Union ("Accession Treaty").

3. In respect of a new Member State, this Agreement shall apply as from the date of accession of that new Member State to the European Union.

4. In order to facilitate the implementation of paragraph 3 of this Article, as from the date of signature of an Accession Treaty, the Trade Committee shall examine any effects on this Agreement deriving from the accession of a new Member State to the European Union, pursuant to subparagraph (e) of Article 33.2(6). The Trade Council shall adopt a decision on any necessary amendments to the Annexes to this Agreement, and on any other necessary adaptations, including transitional measures. Any decision of the Trade Council adopted pursuant to this paragraph shall take effect on the date of accession of that new Member State to the European Union.

## ARTICLE 33.14

### Private rights

1. Nothing in this Agreement shall be construed as directly conferring rights or imposing obligations on persons, other than rights or obligations created between the Parties under public international law, or as allowing this Agreement to be directly invoked in the legal systems of the Parties.

2. A Party shall not provide for a right of action under the law of that Party against the other Party on the grounds that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 33.15

Duration

This Agreement shall remain in force until the date of entry into force of the Advanced Framework Agreement.

ARTICLE 33.16

Termination

Notwithstanding Article 33.15, either Party may notify the other Party of its intention to terminate this Agreement. That notification shall be sent, for the European Union, to the Secretary-General of the Council of the European Union and, for Chile, to the Ministry of Foreign Affairs. The termination shall take effect six months after the date of that notification.

ARTICLE 33.17

Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Agreement.

Done at …, this … day of … in the year …

For the European Union

For the Republic of Chile