AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA

The Government of the United States of America, the Government of the United Mexican States, and the Government of Canada (collectively "the Parties"), resolving to:

STRENGTHEN ANEW the longstanding friendship between them and their peoples, and the strong economic cooperation that has developed through trade and investment;

FURTHER strengthen their close economic relationship;

REPLACE the 1994 North American Free Trade Agreement with a 21st Century, high standard new agreement to support mutually beneficial trade leading to freer, fairer markets, and to robust economic growth in the region;

PRESERVE AND EXPAND regional trade and production by further incentivizing the production and sourcing of goods and materials in the region;

ENHANCE AND PROMOTE the competitiveness of regional exports and firms in global markets, and conditions of fair competition in the region;

RECOGNIZE that small and medium-sized enterprises (SMEs), including micro-sized enterprises, contribute significantly to economic growth, employment, community development, youth engagement and innovation, and seek to support their growth and development by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

ESTABLISH a clear, transparent, and predictable legal and commercial framework for business planning, that supports further expansion of trade and investment;

FACILITATE trade between the Parties by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for importers and exporters, and encourage expanding cooperation in the area of trade facilitation and enforcement;

RECOGNIZE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, and protect legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living or non-living exhaustible natural resources, integrity and stability of the financial system, and public morals, in accordance with the rights and obligations provided in this Agreement;

FACILITATE trade in goods and services between the Parties by preventing, identifying, and eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting good regulatory practices;

PROTECT human, animal, or plant life or health in the territories of the Parties and advance science-based decision making while facilitating trade between them;

ELIMINATE obstacles to international trade which are more trade-restrictive than necessary;

PROMOTE high levels of environmental protection, including through effective enforcement by each Party of its environmental laws, as well as through enhanced environmental cooperation, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices;

PROMOTE the protection and enforcement of labor rights, the improvement of working conditions, the strengthening of cooperation and the Parties' capacity on labor issues;

RECOGNIZE that the implementation of government-wide practices to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability can facilitate international trade, investment, and economic growth, while contributing to each Party's ability to achieve its public policy objectives;

PROMOTE transparency, good governance and the rule of law, and eliminate bribery and corruption in trade and

investment;

RECOGNIZE the importance of increased engagement by indigenous peoples in trade and investment;

SEEK to facilitate women's and men's equal access to and ability to benefit from the opportunities created by this Agreement and to support the conditions for women's full participation in domestic, regional, and international trade and investment;

RECOGNIZE the important work that their relevant authorities are doing to strengthen macroeconomic cooperation; and

ESTABLISH an Agreement to address future trade and investment challenges and opportunities, and contribute to advancing their respective priorities over time,

HAVE AGREED as follows:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Relation to other Agreements

Each Party affirms its existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which it and another Party are party.

Article 1.3. Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between a Party's obligations under this Agreement and its respective obligations under the following multilateral environmental agreements ("covered agreements"): (1)

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

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;

(c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;

(d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;

(e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;

(f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and

(g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949,

a Party's obligations under this Agreement shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade.

2. Pursuant to Article 34.3 (Amendments), the Parties may agree in writing to modify paragraph 1 to include any amendment to an agreement referred to therein, and any other environmental or conservation agreement.

(1) For the purposes of this paragraph, (1) "covered agreements" shall encompass the multilateral environmental agreements provided herein and those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which the Party is party; and

(2) a Party's "obligations" shall be interpreted to reflect, inter alia, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

Article 1.4. Persons Exercising Delegated Governmental Authority

Each Party shall ensure that a person that has been delegated regulatory, administrative, or other governmental authority by a Party acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

Section B. General Definitions

Article 1.5. General Definitions

For the purposes of this Agreement, unless otherwise provided:

AD Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

central level of government means:

(a) for Canada, the Government of Canada;

(b) for Mexico, the federal level of government; and

(c) for the United States, the federal level of government;

Commission means the Free Trade Commission established under Article 30.1 (Establishment of the Free Trade Commission);

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

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

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

(a) charge equivalent to an internal tax imposed consistently with Article II:2 of the GATT 1994;

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

(c) antidumping or countervailing duty; and (d) premium offered or collected on an imported good arising out of any tendering

system in respect of the administration of quantitative import restrictions, tariff rate quotas, or tariff preference levels;

customs offense means any act committed for the purpose of, or having the effect of, avoiding a Party's laws or regulations pertaining to the provisions of this Agreement governing importations or exportations of goods between, or transit of goods through, the territories of the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, set out in Annex 1A to the WTO Agreement;

days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the Understanding on Rules and Procedures Governing the Settlement of Disputes, set out in Annex 2 to the WTO Agreement;

duty deferral program includes measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-

owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

enterprise of a Party means an enterprise constituted or organized under the law of a Party; existing means in effect on the date of entry into force of this Agreement;

GATS means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

goods means a merchandise, product, article, or material;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of a Party;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

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

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

IMF Articles of Agreement means the Articles of Agreement of the International Monetary Fund, done at Bretton Woods, United States on July 22, 1944;

individual means a natural person; measure includes any law, regulation, procedure, requirement, or practice;

NAFTA 1994 means the North American Free Trade Agreement that entered into force on January 1, 1994;

national means a "natural person who has the nationality of a Party" as set out below for each Party or a permanent resident of a Party:

(a) for Canada, a citizen of Canada;

(b) for Mexico, a person who has the nationality of Mexico in accordance with its applicable laws; and

(c) for the United States, a "national of the United States" as defined in the Immigration and Nationality Act,

originating means qualifying as originating under the rules of origin set out in Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods);

person means a natural person or an enterprise; person of a Party means a national of a Party or an enterprise of a Party; preferential tariff treatment means the duty rate applicable to an originating good;

publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

recovered material means a material in the form of one or more individual parts that results from:

(a) the disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new; regional level of government means:

(a) for Canada, a province or territory of Canada;

(b) for Mexico, a state of the United Mexican States; and

(b) for the United States, a state of the United States, the District of Columbia, or Puerto Rico;

Safeguards Agreement means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement;

sanitary or phytosanitary measure means a measure referred to in paragraph 1 of Annex A to the SPS Agreement;

SCM Agreement means the Agreement on Subsidies and Countervailing Measures set out in Annex 1A to the WTO Agreement;

Secretariat means the Secretariat established under Article 30.6 (The Secretariat); SME means a small and medium-sized enterprise, including a micro-sized enterprise;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, set out in Annex 1A to the WTO Agreement;

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

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

territory has for each Party the meaning set out in Section C (Country-Specific Definitions);

textile or apparel good means a textile or apparel good classified in HS subheading 4202.12, 4202.22, 4202.32, or 4202.92 luggage, handbags and similar articles with an outer surface of textile materials), heading 50.04 through 50.07, 51.04 through 51.13, 52.04 through 52.12, 53.03 through 53.11, Chapter 54 through 63, heading 66.01 (umbrellas) or heading 70.19 (yarns and fabrics of glass fiber), subheading 9404.90 (articles of bedding and similar furnishing), or heading 96.19 (babies diapers and other sanitary textile articles);

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement; (2)

Uniform Regulations means the regulations described in Article 5.16 (Uniform Regulations); WTO means the World Trade Organization; and

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

(2) For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

Section C. Country-Specific Definitions

For the purposes of this Agreement, unless otherwise provided:

territory means:

(a) for Canada,

(i) the land territory, air space, internal waters, and territorial sea of Canada,

(ii) the exclusive economic zone of Canada, and

(ii) the continental shelf of Canada,

as determined by its domestic law and consistent with international law.

(b) for Mexico,

(i) the land territory, including the states of the Federation and Mexico City,

(ii) the air space, and

(iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the United Nations Convention on the

Law of the Sea, done at Montego Bay on December 10, 1982; and

(c) for the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the United Nations Convention on the Law of the Sea, the United States may exercise sovereign rights or jurisdiction.

Chapter 2. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 2.1. Definitions

For the purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials that exhibit for prospective customers the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that the films and recordings are not for broadcast to the general public;

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

consular transactions means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party, or in the territory of a non-Party, for the purpose of obtaining 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 the good;

consumed means:

(a) actually consumed; or

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

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of the Party of goods of another Party;

duty-free means free of customs duty;

goods admitted for sports purposes means sports requisites admitted into the territory of the importing Party for use in sports contests, demonstrations, or training in the territory of the Party;

import licensing 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 as a prior condition for importation into the territory of the importing Party;

Import Licensing Agreement means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) a domestic good or service of the Party granting a waiver of a custom duty or an import license be substituted for an imported good or service;

(c) a person benefitting from a waiver of a custom duty or a grant of an import license, purchase a good or service in the territory of the Party granting the waiver or the import license or accord a preference to a domestically produced good or service;

(d) a person benefitting from a waiver of a custom duty or a grant of an import license produce a good or provide a service, in the territory of the Party granting the waiver or import license, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported;

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

satisfactory evidence means:

(a) a receipt, or a copy of a receipt, evidencing payment of a customs duty on a particular entry;

(b) a copy of the entry document with evidence that it was received by a customs administration;

(c) acopy of a final customs duty determination by a customs administration respecting the relevant entry; or

(d) any other evidence of payment of a customs duty acceptable under the Uniform Regulations; and

used vehicle means an automobile, a truck, a bus, or a special purpose motor vehicle, not including a motorcycle, that:

(a) has been sold, leased, or loaned;

(b) has been driven for more than:

(i) 1,000 kilometers if the vehicle has a gross weight of less than five metric tons, or

(ii) 5,000 kilometers if the vehicle has a gross weight of five metric tons or more; or

(c) was manufactured prior to the current year and at least 90 days have elapsed since the date of manufacture.

Article 2.2. Scope

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

Article 2.3. National Treatment

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 2-A (Exceptions to Article 2.3 (National Treatment) and Article 2.11 (import and Export Restrictions)).

Article 2.4. Treatment of Customs Duties

1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Unless otherwise provided in this Agreement, each Party shall apply a customs duty on an originating good in accordance with its Schedule to Annex 2-B (Tariff Commitments).

3. On the request of a Party, the Parties shall consult to consider accelerating or broadening the scope of the elimination of customs duties set out in their Schedules to Annex 2-B (Tariff Commitments). An agreement between two or more Parties to accelerate or broaden the scope of the elimination of a customs duty on an originating good shall supersede any customs duty rate determined pursuant to those Parties' Schedules to Annex 2-B (Tariff Commitments) for that good once approved by each Party in accordance with its applicable legal procedures.

4. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule to Annex 2-B (Tariff Commitments) on originating goods.

5. Annex 2-C (Provisions Between Mexico and the United States on Automotive Goods) contains additional provisions between Mexico and the United States relating to customs duties on automotive goods that are not originating under Chapter 4 (Rules of Origin).

Article 2.5. Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party shall refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

(a) subsequently exported to the territory of another Party;

(b) used as a material in the production of another good that is subsequently exported to the territory of another Party; or

(c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party,

in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party shall, on condition of export, refund, waive, or reduce:

(a) an antidumping or countervailing duty;

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

(c) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. If a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

(a) shall assess the customs duty as if the exported good had been withdrawn for domestic consumption; and

(b) may waive or reduce such customs duty to the extent permitted under paragraph 1.

4. In determining the amount of a customs duty that may be refunded, waived, or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. If satisfactory evidence of the customs duty paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

(a) shall collect the customs duty as if the exported good had been withdrawn for domestic consumption; and

(b) may refund such customs duty, to the extent permitted under paragraph 1, on the timely presentation of such evidence under its laws and regulations.

6. This Article does not apply to:

(a) a good entered under bond for transportation and exportation to the territory of another Party;

(b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported. (1) If that good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of inventory management methods such as first-in, first-out or last-in, first-out. For greater certainty, nothing in this subparagraph shall be construed to permit a Party to waive, refund, or reduce a customs duty contrary to paragraph 2(c);

(c) a good imported into the territory of a Party that is deemed to be exported from its territory, is used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of:

(i) delivery to a duty-free shop,

(ii) delivery for ship's stores or supplies for ships or aircraft, or

(iii) delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;

(d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, if that refund is granted by reason of the failure of that good to conform to sample or specification, or by reason of the shipment of that good without the consent of the consignee;

(e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party;

(f) for exports from the territory of the United States to the territory of Canada or Mexico, goods provided for in U.S. tariff items 1701.13.20 or 1701.14.20 that are imported into the territory of the United States under any re-export program or any like program and used as a material in the production of, or substituted by an identical or similar good used as a material in the production of:

(i) a good provided for in Canadian tariff item 1701.99.00 or Mexican tariff items 1701.99.01, 1701.99.02, and 1701.99.99 (refined sugar), or

(ii) sugar containing products that are prepared foodstuffs or beverages classified in headings 17.04 and 18.06 or in Chapters 19, 20, 21, or 22; or

(g) for trade between Canada and the United States:

(i) imported citrus products,

(ii) an imported good used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, a good provided for in U.S. tariff items 5811.00.20 (quilted cotton piece goods), 5811.00.30 (quilted man-made piece goods) or 6307.90.99 (furniture moving pads), or Canadian tariff items 5811.00.10 (quilted cotton piece goods), 5811.00.20 (quilted man-made piece goods) or 6307.90.30 (furniture moving pads), that are subject to the most-favored-nation rate of duty when exported to the territory of the other Party, and

(ii) an imported good used as a material in the production of apparel that is subject to the most-favored-nation rate of duty when exported to the territory of the other Party.

7. For the purposes of this Article:

identical or similar goods means "identical good" and "similar goods", respectively, as defined in the Customs Valuation Agreement, or as otherwise provided for under the law of the importing Party;

material means "material"as defined in Article 4.1 (Definitions);

used means "used" as defined in Article 4.1 (Definitions).

8. If a good referred to by a tariff item number in this Article is described in parentheses following the tariff item number, the description is provided for purposes of reference only.

(1) Processes such as testing, cleaning, repacking, inspecting, sorting, or marking a good, or preserving a good in its same condition, shall not be considered to change the good's condition.

Article 2.6. Waiver of Customs Duties

No Party shall adopt or maintain any waiver of a customs duty if the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

Article 2.7. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry in accordance with the law of the importing Party;

(b) a good intended for display or demonstration, including its component parts, ancillary apparatus and accessories;

(c) commercial samples and advertising films and recordings; and

(d) a good admitted for sports purposes,

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

2. No Party shall condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

(a) be imported by a national of another Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of a national of another Party in the exercise of the business activity, trade, profession, or sport of that person;

(c) not be sold, leased, or, for goods referred to in paragraph 1(c), not be put to any use other than exhibition or demonstration, while in its territory;

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

(e) be capable of identification when exported;

(f) be exported on the departure of the person referenced in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission as the Party may establish, unless extended;

(g) be admitted in no greater quantity than is reasonable for its intended use; and

(h) be otherwise admissible into the Party's territory under its law.

3. Subject to its law, each Party shall extend the time limit for temporary admission beyond the period initially fixed at the request of the person concerned.

4. Each Party shall adopt or maintain procedures providing for the expeditious release of a good admitted under this Article. To the extent possible, those procedures must provide that when such a good accompanies a national of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

5. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

6. Each Party shall provide, in accordance with its law, that the person responsible for a good admitted under this Article shall not be liable for failure to export the good upon presentation of proof satisfactory to the Party into whose territory the good was admitted that the good has been destroyed within the original time period fixed for temporary admission or any lawful extension.

7. If any condition that a Party imposes under paragraph 2 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on entry or importation of the good in addition to any other charges or penalties provided for under its law.

8. Subject to Chapters 14 (Investment) and Chapter 15 (Cross Border Trade in Services):

(a) each Party shall allow a vehicle, or shipping container or other substantial holder, that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of that vehicle, or shipping container or other substantial holder;

(b) no Party shall require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle, or shipping container or other substantial holder;

(c) no Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle, or shipping container or other substantial holder, into its territory on the exit of that vehicle, or shipping container or other substantial holder, through any particular port of departure; and

(d) no Party shall require that the vehicle or carrier bringing a shipping container or other substantial holder from the territory of another Party into its territory be the same vehicle or carrier that takes that shipping container or other substantial holder to the territory of another Party.

9. For the purposes of paragraph 8, vehicle means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment, if used in international traffic.

10. Each Party shall adopt or maintain procedures allowing for the arrival and release from customs custody, such as through a procedure that provides for temporary admission as set forth in this Article, of a shipping container or other substantial holder being used or to be used in the shipment of goods in international traffic, whether arriving full or empty and of any size, volume, or dimension, with relief from custom duties and allowing it to remain within its territory for at least 90 consecutive days.

11. Each Party shall, in accordance with its laws, regulations, and procedures, extend the timeframe for temporary admission of a shipping container or other substantial holder beyond the period initially fixed at the request of the person concerned.

12. A Party may require that a shipping container or other substantial holder be registered with the customs authority the first time it arrives in its territory, as a condition for the treatment described in paragraphs 10 and 11.

13. Each Party shall include in the treatment of any shipping container or other substantial holder that has an internal volume of one cubic meter or more, the accessories or equipment accompanying it as defined by the importing Party.

14. For the purposes of paragraph 8 and paragraphs 10 through 13, a "shipping container or other substantial holder" includes any container or holder, whether collapsible or not, that is constructed of a sturdy material capable of repeated use, and is used in the shipment of goods in international traffic.

Article 2.8. Goods Re-Entered after Repair or Alteration

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or has increased the value of the good.

2. Paragraph 1 does not apply to a good imported under a duty deferral program that is exported for repair or alteration and is not re-imported under a duty deferral program.

3. Notwithstanding Article 2.5 (Drawback and Duty Deferral Programs), no Party shall apply acustoms duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

4. For the purposes of this Article, repair or alteration does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

Article 2.9. Duty-Free Entry of Commercial Samples of Negligible Value and Printed

Advertising Materials

No Party shall apply a customs duty to commercial samples of negligible value or to printed advertising materials imported from the territory of another Party, regardless of their origin, but a Party may require that:

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

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

Article 2.10. Most-Favored-Nation Rates of Duty on Certain Goods

1. Each Party shall accord most-favored-nation duty-free treatment to a good provided for under the tariff provisions set out in Tables 2.10.1, 2.10.2, and 2.10.3.

2. Notwithstanding Chapter 4 (Rules of Origin), each Party shall consider a good set out in Table 2.10.1, if imported into its territory from the territory of another Party, to be an originating good.

Article 2.11. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994, including its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, mutatis mutandis.

2. The Parties understand that GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) an export or import price requirement, except as permitted in enforcement of antidumping and countervailing duty orders or price undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) a voluntary export restraint inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

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

(a) limiting or prohibiting the importation of the good of that non-Party from the territory of another Party; or

(b) requiring, as a condition for exporting the good of the Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

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

5. No Party shall as a condition for engaging in importation generally, or for the importation of a particular good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor in its territory.

6. For greater certainty, paragraph 5 does not prevent a Party from requiring that a person referred to in that paragraph designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

7. Paragraphs 1 through 6 do not apply to the measures set out in Annex 2-A (Exceptions to Article 2.3 (National Treatment) and Article 2.11 (import and Export Restrictions)).

8. For greater certainty, paragraph 1 applies to the importation of any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made available to the public.

9. For greater certainty, no Party shall adopt or maintain a prohibition or restriction on the importation of originating used

vehicles from the territory of another Party. This Article does not prevent a Party from applying motor vehicle safety or emissions measures, or vehicle registration requirements, of general application to originating used vehicles in a manner consistent with this Agreement.

Article 2.12. Remanufactured Goods

1. For greater certainty, Article 2.11.1 (Import and Export Restrictions) applies to prohibitions and restrictions on a remanufactured good.

2. Subject to its obligations under this Agreement and the WTO Agreement, a Party may require that a remanufactured good:

(a) be identified as such, including through labelling, for distribution or sale in its territory, and

(b) meet all applicable technical requirements that apply to an equivalent good in new condition.

3. If a Party adopts or maintains a prohibition or a restriction on a used good, it shall not apply the measure to a remanufactured good.

Article 2.13. Transparency In Import Licensing Procedures

1. Subject to paragraph 2, each Party shall notify the other Parties of its existing import licensing procedures, if any, as soon as practicable, after this Agreement enters into force. The notification shall:

(a) include the information specified in Article 5.2 of the Import Licensing Agreement and in the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement; and

(b) be without prejudice as to whether the import licensing procedures are consistent with this Agreement.

2. A Party shall be deemed to be in compliance with the obligations in paragraph 1 with respect to an import licensing procedure if:

(a) it has notified that procedure to the Committee on Import Licensing established under Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement; and

(b) it has provided the information requested in the questionnaire on import licensing procedures under Article 7.3 of the Import Licensing Agreement in its most recent submission to the Committee on Import Licensing before the entry into force of this Agreement.

3. A Party shall publish on an official government website any new or modified import licensing procedure, including any information that it is required to be published under Article 1.4(a) of the Import Licensing Agreement. To the extent possible, the Party shall do so at least 20 days before the new procedure or modification takes effect.

4. Each Party shall respond within 60 days to a reasonable inquiry from another Party concerning its licensing rules and its procedures for the submission of an application for an import license, including the eligibility of persons, firms, and institutions to make an application, any administrative body to be approached, and the list of products subject to the licensing requirement.

5. If a Party denies an import license application with respect to a good of another Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial.

6. No Party shall apply an import licensing procedure to a good of another Party unless the Party has complied with the requirements of paragraphs 1 or 2, and 3, with respect to that procedure.

Article 2.14. Transparency In Export Licensing Procedures

1. Within 30 days after the date of entry into force of this Agreement, each Party shall notify the other Parties in writing of the publications in which its export licensing procedures, if any, are set out, including addresses of relevant government websites on which the procedures are published. Thereafter, each Party shall publish any new export licensing procedure, or any modification of an export licensing procedure, it adopts as soon as practicable but no later than 30 days after the new procedure or modification takes effect.

2. Each Party shall ensure that it includes in the publications it has notified under paragraph 1:

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

(b) the goods subject to each licensing procedure;

(c) for each licensing procedure, a description of:

(i) the process for applying for a license, and

(ii) any criteria an applicant must meet to be eligible to apply for a license, such as possessing an activity license, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point from which interested persons can obtain further information on the conditions for obtaining an export license;

(e) any administrative body to which an application or other relevant documentation is to be submitted;

(f) a description of or a citation to a publication reproducing in full any measure that the export licensing procedure implements;

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

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

(i) any exemptions from or exceptions to the requirement to obtain an export license that are available to the public, how to request or use these exemptions or exceptions, and the criteria for the exemptions or exceptions.

3. Each Party shall provide another Party, upon the other Party's request and to the extent practicable, the following information regarding a particular export licensing procedure that it adopts or maintains, except when doing so would reveal business proprietary or other confidential information of a particular person:

(a) the aggregate number of licenses the Party has granted over a recent period specified in the other Party's request; and

(b) measures, if any, that the Party has adopted in conjunction with the licensing procedure to restrict domestic production or consumption or to stabilize production, supply, or prices for the relevant good.

4. This Article does not require a Party to grant an export license, or prevent a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes, including: the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies; Nuclear Suppliers Group; the Australia Group; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Geneva, September 3, 1992, and signed at Paris, January 13, 1993; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow, April 10, 1972; Treaty on the Non-Proliferation of Nuclear Weapons done at Washington, London, and Moscow, July 1, 1968; and the Missile Technology Control Regime.

5. For the purposes of this Article, export licensing procedure means a requirement that a Party adopts or maintains under which an exporter must, as a condition for exporting a good from the Party's territory, submit an application or other documentation to an administrative body or bodies, but does not include customs documentation required in the normal course of trade or any requirement that must be fulfilled prior to introduction of the good into commerce within the Party's territory.

Article 2.15. Export Duties, Taxes, or other Charges

No Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless the duty, tax, or charge is also applied to the good if destined for domestic consumption.

Article 2.16. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges

applied in a manner consistent with Article IM:2 of the GATT 1994, and antidumping or countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to a domestic good or a taxation of an import or export for fiscal purposes.

2. No Party shall require a consular transaction, including a related fee or charge, in connection with the importation of a good of another Party. (2)

3. No Party shall adopt or maintain a customs user fee on an originating good. (3)

(2) For Mexico, this paragraph does not apply to the procedures for the duty-free entry of personal and household effects of natural persons relocating to Mexico.

(3) The merchandise processing fee (MPF) is the only customs user fee of the United States to which this paragraph applies. The derecho de trámite aduanero is the only customs user fee of Mexico to which this paragraph applies.

Article 2.17. Committee on Trade In Goods

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

2. The Goods Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter.

3. The Goods Committee shall meet at a venue and time as the Parties decide or by electronic means. In-person meetings will be held alternately in the territory of each Party.

4. The Goods Committee's functions shall include:

(a) monitoring the implementation and administration of this Chapter; promoting trade in goods between the Parties;

(b) providing a forum for the Parties to consult and endeavor to resolve issues relating to this Chapter, including, as appropriate, in coordination or jointly with other Committees, working groups, or other subsidiary bodies established under this Agreement;

(c) promptly seeking to address tariff and non-tariff barriers to trade in goods between the Parties and, if appropriate, referring the matter to the Commission for its consideration;

(d) coordinating the exchange of information on trade in goods between the Parties;

(e) discussing and endeavoring to resolve any difference that may arise between the Parties on matters related to the Harmonized System, including ensuring that each Party's obligations under this Agreement are not altered by its implementation of

(f) future amendments to the Harmonized System into its national nomenclature;

(g) referring to another committee established under this Agreement those issues that may be relevant to that committee, as appropriate; and

(h) undertaking additional work that the Commission may assign, or another committee may refer, to it.

Chapter 3. AGRICULTURE

Section A. General Provisions

Article 3.1. Definitions

For the purposes of this Chapter:

agricultural good means agricultural products referred to in Article 2 of the Agreement on Agriculture;

export subsidy has the same meaning as assigned to "export subsidies" in Article 1(e) of the Agreement on Agriculture; and

Agreement on Agriculture means the Agreement on Agriculture, set outin Annex 1A to the WTO Agreement.

Article 3.2. Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

2. In the event of any inconsistency between this Chapter and another provision of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

Article 3.3. International Cooperation

The Parties shall work together at the WTO to promote increased transparency and to improve and further develop multilateral disciplines on market access, domestic support, and export competition with the objective of substantial progressive reductions in support and protection resulting in fundamental reform.

Article 3.4. Export Competition

1. No Party shall adopt or maintain an export subsidy on any agricultural good destined for the territory of another Party.

2. If a Party considers that export financing support granted by another Party results or may result in a distorting effect on trade between the Parties, or considers that an export subsidy is being granted by another Party, with respect to an agricultural good, it may request a discussion on the matter with the other Party. The responding Party shall agree to discuss the matter with the requesting Party as soon as practicable.

Article 3.5. Export Restrictions - Food Security

1. For the purpose of this Article, "foodstuff" includes fish and fish products intended for human consumption.

2. The Parties recognize that under Article X1:2(a) of the GATT 1994 a Party may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of the GATT 1994 on a foodstuff to prevent or relieve a critical shortage, subject to meeting the conditions set out in Article 12.1 of the Agreement on Agriculture.

3. In addition to the conditions set out in Article 12.1 of the Agreement on Agriculture under which a Party may apply an export prohibition or restriction, other than a duty, tax, or other charge on a foodstuff, a Party that:

(a) imposes an export prohibition or restriction on the exportation or sale for export of a foodstuff to another Party shall notify the measure to the other Parties at least 30 days prior to the date the measure takes effect, except when the critical shortage is caused by an event constituting force majeure, in which case the Party shall notify prior to the date the measure takes effect; or

(b) maintains an export prohibition or restriction as of the date of entry into force of this Agreement shall notify the measure to the other Parties within 30 days of the date of entry into force of this Agreement.

4. A notification made pursuant to paragraph 3 must include: the reasons for adopting or maintaining the export prohibition or restriction, an explanation of how the measure is consistent with Article X1:2(a) of the GATT 1994, and an identification of alternative measures, if any, that the Party considered before imposing the export prohibition or restriction.

5. A Party is not required to notify an export prohibition or restriction pursuant to paragraphs 3 or 8 if the measure prohibits or restricts the exportation or sale for export only of a foodstuff that the Party has been a net importer during each of the three calendar years preceding the imposition of the measure, excluding the year in which the Party imposes the measure.

6. If a Party that adopts or maintains a measure referred to in paragraph 3 has been a net importer of each foodstuff subject to that measure during each of the three calendar years preceding imposition of the measure, excluding the year in which the Party imposes the measure, and that Party does not provide the other Parties with a notification pursuant to paragraph 3, the Party shall, within a reasonable period of time, provide to the other Parties trade data demonstrating that it was a net importer of the foodstuff during these three calendar years.

7. A Party that is required to notify a measure under paragraph 3 shall:

(a) on the request of another Party having a substantial interest as an importer of the foodstuff subject to the measure, consult with that Party with respect to any matter relating to the measure;

(b) on the request of another Party having a substantial interest as an importer of the foodstuff subject to the measure, provide that Party with relevant economic indicators bearing on whether a critical shortage within the meaning of Article X1:2(a) of the GATT 1994 exists or is likely to occur in the absence of the measure, and on how the measure will prevent or relieve the critical shortage; and

(c) respond in writing to any question posed by another Party regarding the measure within 14 days of receipt of the question.

8. A Party that considers that another Party should have notified a measure under paragraph 3 may bring the matter to the attention of that other Party. If the matter is not satisfactorily resolved promptly thereafter, the Party that considers that the measure should have been notified may itself bring the measure to the attention to the third Party.

9. A Party should ordinarily terminate a measure subject to notification under paragraphs 3 or 8 within six months of the date it is adopted. A Party contemplating continuation of a measure beyond six months from the date it adopted the measure shall notify the other Parties no later than five months after the date it adopted the measure and provide the information identified in paragraph 3. Unless the Party has consulted with the other Parties that are net importers of the foodstuff subject to the export prohibition or restriction, the Party shall not continue the measure beyond 12 months from the date the Party adopted the measure. The Party shall immediately discontinue the measure when the critical shortage, or threat thereof, ceases to exist.

10. No Party shall apply a measure that is subject to notification under paragraphs 3 or 8 to a foodstuff purchased for a non-commercial, humanitarian purpose.

Article 3.6. Domestic Support

1. The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting effects and effects on production. If a Party supports its agricultural producers, the Party shall consider domestic support measures that have no, or at most minimal, trade distorting effects or effects on production.

2. Ifa Party raises concerns that another Party's domestic support measure has had a negative impact on trade between the Parties, the Parties shall share relevant information regarding the domestic support measure with each other and discuss the matter with a view to seeking to minimize any negative trade impact.

Article 3.7. Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade ("Agriculture Committee"), composed of government representatives of each Party.

2. The Agriculture Committee's functions shall include:

(a) promoting trade in agricultural goods between the Parties under this Agreement;

(b) monitoring and promoting cooperation on the implementation and administration of this Chapter;

(c) providing a forum for the Parties to consult and endeavor to address issues or trade barriers and improve access to their respective markets, in coordination or jointly with other committees, working groups, or any other subsidiary bodies established under this Agreement;

(d) endeavoring to exchange information on trade in agricultural goods between the Parties, including information covered by Article 3.10.1 (Transparency and Consultations) or any other relevant transparency provision in this Chapter;

(e) fostering cooperation among the Parties in areas of mutual interest, such as rural development, technology, research and development, and capacity building, and creating joint programs as mutually agreed between the agencies involved in agriculture, among others;

(f) undertaking any additional work, including that the Commission may assign or another committee may refer;

(g) recommending to the Commission any modification of or addition to this Chapter; and

(h) reporting annually on its activities to the Commission.

3. The Agriculture Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

4. The Agriculture Committee shall meet within one year of the date of entry into force of this Agreement and once each year thereafter unless the Parties decide otherwise.

Article 3.8. Consultative Committees on Agriculture

1. The activities of the Consultative Committees on Agriculture (CCAs) established by:

(a) the Canada-U.S. Consultative Committee on Agriculture Terms of Reference in accordance with the Record of Understanding Between the Governments of the United States of America and Canada Regarding Areas of Agricultural Trade (ROU) on December 4, 1998;

(b) the Memorandum of Understanding Between the U.S. Department of Agriculture and the Office of the U.S. Trade Representative, and the Secretariat of Agriculture, Livestock, Rural Development, Fish and Food and the Secretary of Economy of the United Mexican States Regarding Areas of Food and Agriculture Trade (US-MX MOU) on October 1, 2001 and re-established on March 6, 2007; and

(c) the Memorandum of Understanding between the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food of the United Mexican States and Agriculture and Agri-Food Canada for the establishment of the Mexico- Canada Agriculture Consultative Committee (MX-CA MOU) on February 1, 2002 and re-established in March 2006,

shall as of the date of entry into force of this Agreement be organized under this Agreement.

2. The CCAs shall be governed by and operate according to their respective ROU or MOU, and all implementing or administrative documents, as may be amended.

3. The CCAs may inform the Agriculture Committee, the Committee on Sanitary and Phytosanitary Measures, or the Committee on Technical Barriers to Trade of their activities.

Article 3.9. Agricultural Special Safeguards

Originating agricultural goods traded under preferential tariff treatment shall not be subject to any duties that the importing Party applies pursuant to a special safeguard it takes pursuant to the Agreement on Agriculture. (1)

(1) For greater certainty, an agricultural good for which most-favored-nation tariff treatment applies may be subject to additional duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

Article 3.10. Transparency and Consultations

1. Each Party shall endeavor, as appropriate, to share with another Party, on request, available information regarding a measure relating to trade in agricultural goods taken by a regional level of government in its territory that may have a significant effect on trade between those Parties.

2. At the request of another Party, a Party shall meet to discuss, and if appropriate, resolve, matters arising from grade, quality, technical specifications, and other standards as they affect trade between the Parties.

Article 3.11. Annexes

1. Annex 3-A applies to trade in agricultural goods between Canada and the United States.

2. Annex 3-B applies to trade in agricultural goods between Mexico and the United States.

3. Annex 3-C applies to trade in distilled spirits, wine, beer, and other alcohol beverages.

4. Annex 3-D applies to proprietary formulas for prepackaged foods and food additives.

Section B. Agricultural Biotechnology

Article 3.12. Definitions

For the purposes of this Section:

agricultural biotechnology means technologies, including modern biotechnology, used for the deliberate manipulation of an organism to introduce, remove, or modify one or more heritable characteristics of a product for agriculture and aquaculture use and that are not technologies used in traditional breeding and selection;

Low Level Presence (LLP) Occurrence means low levels of recombinant deoxyribonucleic acid (DNA) plant materials that have passed a food safety assessment according to the Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003) in one or more countries, which may on occasion be inadvertently present in food or feed in importing countries in which the food safety of the relevant recombinant DNA plant has not been determined;

modern biotechnology means the application of:

(a) in vitro nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles; or

(b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

product of agricultural biotechnology means an agricultural good, or a fish or fish product covered by Chapter 3 of the Harmonized System, developed using agricultural biotechnology, but does not include a medicine or a medical product; and

product of modern biotechnology means an agricultural good, or a fish or fish product covered by Chapter 3 of the Harmonized System, developed using modern biotechnology, but does not include a medicine or a medical product.

Article 3.13. Contact Points

Each Party shall designate and notify a contact point or contact points for the sharing of information on matters related to this Section, in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

Article 3.14. Trade In Products of Agricultural Biotechnology

1. The Parties confirm the importance of encouraging agricultural innovation and facilitating trade in products of agricultural biotechnology, while fulfilling legitimate objectives, including by promoting transparency and cooperation, and exchanging information related to the trade in products of agricultural biotechnology.

2. This Section does not require a Party to mandate an authorization for a product of agricultural biotechnology to be on the market.

3. Each Party shall make available to the public and, to the extent possible, online:

(a) the information and documentation requirements for an authorization, if required, of a product of agricultural biotechnology;

(b) any summary of any risk or safety assessment that has led to the authorization, if required, of a product of agricultural biotechnology; and

(c) any list of the products of agricultural biotechnology that have been authorized in its territory.

4. To reduce the likelihood of disruptions to trade in products of agricultural biotechnology:

(a) each Party shall continue to encourage applicants to submit timely and concurrent applications to the Parties for authorization, if required, of products of agricultural biotechnology;

(b) a Party requiring any authorization for a product of agricultural biotechnology shall:

(i) accept and review applications for the authorization, if required, of products of agricultural biotechnology on an ongoing basis year-round,

(ii) adopt or maintain measures that allow the initiation of the domestic regulatory authorization process of a product not yet authorized in another country,

(iii) if an authorization is subject to expiration, take steps to help ensure that the review of the product is completed and a decision is made in a timely manner, and if possible, prior to expiration, and

(iv) communicate with the other Parties regarding any new and existing authorizations of products of agricultural biotechnology so as to improve information exchange.

Article 3.15. LLP Occurrence

1. Each Party shall adopt or maintain policies or approaches designed to facilitate the management of any LLP Occurrence.

2. To address an LLP Occurrence, and with a view to preventing future LLP Occurrences, on request of an importing Party, an exporting Party shall:

(a) provide any summary of the specific risk or safety assessments that the exporting Party conducted in connection with any authorization of the product of modern biotechnology that is the subject of the LLP Occurrence;

(b) provide, on receiving permission of the entity, if required, a contact point for any entity within its territory that received authorization for the product of modern biotechnology that is the subject of the LLP Occurrence and that is on the basis of this authorization, likely to possess:

(i) any existing, validated methods for the detection of the product of modern biotechnology that is the subject of the LLP Occurrence,

(ii) any reference sample of the product of modern biotechnology that is the subject of the LLP Occurrence necessary for the detection of the LLP Occurrence, and

(iii) relevant information (2) that can be used by the importing Party to conduct a risk or safety assessment, if appropriate, in accordance with the relevant international standards and guidelines; and

(c) encourage the entity in its territory that received authorization related to the product of modern biotechnology that is the subject of the LLP Occurrence to share the information referred to in paragraph 2(b) with the importing Party.

3. In the event of an LLP Occurrence, the importing Party shall:

(a) inform the importer or the importer's agent of the LLP Occurrence and of any additional information, including the information referenced in paragraph 2(b) of this Article, that will be required to be submitted to assist the importing Party to make a decision on the management of the LLP occurrence;

(b) on request, and if available, provide to the exporting Party a summary of any risk or safety assessment that the importing Party has conducted in accordance with its domestic law in connection with the LLP Occurrence;

(c) ensure that the LLP Occurrence is managed without unnecessary delay and that any measure (3) applied to manage the LLP Occurrence is appropriate to achieve compliance with the importing Party's laws and regulations and takes into account any risk posed by the LLP Occurrence; and

(d) take into account, as appropriate, any relevant risk or safety assessment provided, and authorization granted, by another Party or non-Party when deciding how to manage the LLP Occurrence.

(2) For example, relevant information includes the information contained in Annex 3 of the Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003).

(3) For purposes of this paragraph, "measure" does not include penalties.

Article 3.16. Working Group for Cooperation on Agricultural Biotechnology

1. The Parties hereby establish a Working Group for Cooperation on Agricultural Biotechnology (Working Group) for information exchange and cooperation on policy and trade-related matters associated with products of agricultural biotechnology. The Working Group shall be co-chaired by government representatives of each of the Parties, and shall be comprised of policy officials responsible for issues related to agricultural biotechnology of each of the Parties. The Working Group shall report to the Agriculture Committee on its activities and progress on related matters.

2. The Working Group shall provide a forum for the Parties to:

(a) exchange information on issues, including on existing and proposed domestic laws, regulations, and policies, and on any

risk or safety assessments subject to appropriate confidentiality arrangements, related to the trade in products of agricultural biotechnology;

(b)exchange information, and collaborate when possible, on issues pertaining to products of agricultural biotechnology, including on regulatory and policy developments;

(c) consider work, based upon accumulated knowledge and experience of certain products, in areas of regulatory affairs and policy to facilitate trade in products of agricultural biotechnology;

(d) collaborate to consider common approaches for the management of an LLP Occurrence; and

(e) consider the work conducted under other trilateral cooperation mechanisms focused on agricultural biotechnology, including the Trilateral Technical Working Group, established by the Parties in 2003 and operating under Terms of Reference from February 2015.

3. The Working Group shall coordinate efforts to advance regulatory approaches and trade policies that are transparent, and based on science and on risk for products of agricultural biotechnology in other countries and in international organizations.

4. The Working Group shall meet annually, unless otherwise decided by the Parties, and may meet in person, or by any other means as determined by the Parties.

Chapter 4. RULES OF ORIGIN

Article 4.1. Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings, or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

fungible goods or fungible materials means goods or materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

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

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

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

(g) catalysts and solvents; and

(h) any other material that is not incorporated into the good but for which the use in the production of the good can reasonably be demonstrated to be a part of that production;

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article 4.8 (Intermediate Materials);

material means a good that is used in the production of another good, and includes a part or an ingredient;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of a good means the net cost that can be reasonably allocated to a good using one of the methods set out in Article

4.5 (Regional Value Content);

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the applicable federal government interest rate identified in the Uniform Regulations

for comparable maturities;

non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;

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

packaging materials and containers means materials and containers in which a good is packaged for retail sale;

packing materials and containers means materials and containers that are used to protect a good during transportation;

producer means a person who engages in the production of a good;

production means growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, breeding, extracting, manufacturing, processing, or assembling a good, or aquaculture;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

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

(a) personnel training, without regard to where the training is performed; or

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

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

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

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

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

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

(e) product liability insurance;

(f) office supplies for sales promotion, marketing, and after-sales service of goods, if those costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

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

(h) rent and depreciation of sales promotion, marketing, and after-sales service offices, and distribution centers;

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

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

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

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

total cost means all product costs, period costs, and other costs incurred in the territory of one or more of the Parties, where:

(a) product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overheads;

(b) period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses; and

(c) other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

transaction value means the customs value as determined in accordance with the Customs Valuation Agreement, that is, the price actually paid or payable for a good or material with respect to a transaction of, except for the application of Article 10.3(a) in the Appendix to Annex 4-B (Product-Specific Rules of Origin), the producer of the good, adjusted in accordance with the principles of Articles 8(1), 8(3), and 8(4) of the Customs Valuation Agreement, regardless of whether the good or material is sold for export;

used means used or consumed in the production of goods; and

value means value of a good or material for purposes of calculating customs duties or for the purposes of applying this Chapter.

Article 4.2. Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 4.3 (Wholly Obtained or Produced Goods);

(b) produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all applicable requirements of Annex 4-B (Product-Specific Rules of Origin);

(c) produced entirely in the territory of one or more of the Parties exclusively from originating materials; or

(d) except for a good provided for in Chapter 61 to 63 of the Harmonized System:

(i) produced entirely in the territory of one or more of the Parties;

(ii) one or more of the non-originating materials provided for as parts under the Harmonized System used in the production of the good cannot satisfy the requirements set out in Annex 4-B (Product-Specific Rules of Origin) because both the good and its materials are classified in the same subheading or same heading that is not further subdivided into subheadings or, the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to tule 2(a) of the General Rules of Interpretation of the Harmonized System; and

(iii) the regional value content of the good, determined in accordance with Article 4.5 (Regional Value Content), is not less than 60 percent if the transaction value method is used, or not less than 50 percent if the net cost method is used;

and the good satisfies all other applicable requirements of this Chapter.

Article 4.3. Wholly Obtained or Produced Goods

Each Party shall provide that, for the purposes of Article 4.2 (Originating Goods), a good is wholly obtained or produced entirely in the territory of one or more of the Parties if it is:

(a) a mineral good or other naturally occurring substance extracted or taken from there;

(b) a plant, plant good, vegetable, or fungus, grown, cultivated, harvested, picked, or gathered there;

(c) a live animal born and raised there;

(d) a good obtained from a live animal there;

(e) an animal obtained by hunting, trapping, fishing, gathering, or capturing there;

(f) a good obtained from aquaculture there;

(g) fish, shellfish, or other marine life taken from the sea, seabed or subsoil outside the territories of the Parties and, under international law, outside the territorial sea of non-Parties, by vessels that are registered, listed, or recorded with a Party and entitled to fly the flag of that Party;

(h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed, or recorded with a Party and entitled to fly the flag of that Party;

(i) a good other than fish, shellfish, and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, provided that Party has the right to exploit that seabed or subsoil;

(j) waste and scrap derived from:

(i) production there, or

(ii) used goods collected there, provided the goods are fit only for the recovery of raw materials; and

(k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production.

Article 4.4. Treatment of Recovered Materials Used In the Production of a Remanufactured Good

1. Each Party shall provide that a recovered material derived in the territory of one or more of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

(a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 4.2 (Originating Goods); and

(b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 4.2 (Originating Goods).

Article 4.5. Regional Value Content

1. Except as provided in paragraph 6, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the importer, exporter, or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.

2. Each Party shall provide that an importer, exporter, or producer may calculate the regional value content of a good on the basis of the following transaction value method:

RVC = (TV-VNM)/TV x 100 where RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good, adjusted to exclude any costs incurred in the international shipment of the good; and

VNM is the value of non-originating materials including materials of undetermined origin used by the producer in the production of the good.

3. Each Party shall provide that an importer, exporter, or producer may calculate the regional value content of a good on the basis of the following net cost method:

RVC = (NC-VNM)/NC x 100

where

RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and

VNM is the value of non-originating materials including materials of undetermined origin used by the producer in the production of the good.

4. Each Party shall provide that the value of non-originating materials used by the producer in the production of a good shall not, for the purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

5. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and

(b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.

6. Each Party shall provide that an importer, exporter, or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 3 if the rule under the Annex 4-B (Product-Specific Rules of Origin) does not provide a rule based on the transaction value method.

7. If an importer, exporter, or producer of a good calculates the regional value content of the good on the basis of the transaction value method set out in paragraph 2 and a Party subsequently notifies the importer, exporter, or producer, during the course of a verification pursuant to Chapter 5 (Origin Procedures) that the transaction value of the good, or the value of material used in the production of the good, is required to be adjusted or is unacceptable under Article | of the Customs Valuation Agreement, the exporter, producer, or importer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 3.

8. For the purposes of calculating the net cost of a good under paragraph 3, the producer of the good may:

(a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all those goods, and then reasonably allocate the resulting net cost of those goods to the good;

(b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or

(c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,

provided that the allocation of all those costs is consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations.

Article 4.6. Value of Materials Used In Production

Each Party shall provide that, for the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material;

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located,

(ii) the value as determined for an imported material in subparagraph (a), or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses, and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

Article 4.7. Further Adjustments to the Value of Materials

1. Each Party shall provide that for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer of the good;

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or mote of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. If the cost or expense listed in paragraph 1 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

Article 4.8. Intermediate Materials

Each Party shall provide that any self-produced material, other than a component identified in Table G of the Appendix to Annex 4-B (Product-Specific Rules of Origin), that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under paragraph 2 or 3 of Article 4.5 (Regional Value Content), provided that if the intermediate material is subject to a regional value content requirement, no other self-produced material subject to a regional value content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

Article 4.9. Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is produced.

Article 4.10. Automotive Goods

The Appendix to Annex 4-B (Product-Specific Rules of Origin) includes additional provisions that apply to automotive goods.

Article 4.11. Accumulation

1. Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.2 (Originating Goods) and all other applicable requirements in this Chapter.

2. Each Party shall provide that an originating good or material of one or more of the Parties is considered as originating in the territory of another Party when used as a material in the production of a good in the territory of another Party.

3. Each Party shall provide that production undertaken on a non-originating material in the territory of one or more of the Parties may contribute toward the originating status of a good, regardless of whether that production was sufficient to confer originating status to the material itself.

Article 4.12. De Minimis

1. Except as provided in Annex 4-A (Exceptions to Article 4.12 (De Minimis)), each Party shall provide that a good is an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 4-B (Product- Specific Rules of Origin) is not more than 10 percent:

(a) of the transaction value of the good adjusted to exclude any costs incurred in the international shipment of the good; or

(b) of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

2. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.

3. A good that is otherwise subject to a regional value content requirement shall not be required to satisfy the requirement if the value of all non-originating materials used in the production of the good is not more than 10 percent of the transaction value of the good, adjusted to exclude any costs incurred in the international shipment of the good, or the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

4. With respect to a textile or apparel good, Articles 6.1.2 and 6.1.3 (Rules of Origin and Related Matters) apply in place of paragraph 1.

Article 4.13. Fungible Goods and Materials

1. Each Party shall provide that a fungible material or good is originating if:

(a) when originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating is made on the basis of an inventory management method recognized in the Generally Accepted Accounting Principles of, or otherwise accepted by, the Party in which the production is performed; or

(b) when originating and non-originating fungible goods are commingled and exported in the same form, the determination of whether the goods are originating is made on the basis of an inventory management method recognized in the Generally Accepted Accounting Principles of, or otherwise accepted by, the Party from which the good is exported.

2. The inventory management method selected under paragraph 1 must be used throughout the fiscal year of the producer or the person that selected the inventory management method.

3. For greater certainty, an importer may claim that a fungible material or good is originating if the importer, producer, or exporter has physically segregated each fungible material or good as to allow their specific identification.

Article 4.14. Accessories, Spare Parts, Tools, or Instructional or other Information Materials

1. Each Party shall provide that:

(a) in determining whether a good is wholly obtained, or satisfies a process or change in tariff classification requirement as set out in Annex 4-B (Product-Specific Rules of Origin), accessories, spare parts, tools, or instructional or other information materials as described in paragraph 3, are to be disregarded; and

(b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools, or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools, or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools, or instructional or other information materials are covered when:

(a) the accessories, spare parts, tools, or instructional or other information materials are classified with, delivered with, but not invoiced separately from the good; and

(b) the types, quantities, and value of the accessories, spare parts, tools, or instructional or other information materials are customary for that good.

Article 4.15. Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 4-B (Product-Specific Rules of Origin) or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging

materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

Article 4.16. Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

Article 4.17. Sets of Goods, Kits or Composite Goods

1. Except as provided in Annex 4-B (Product-Specific Rules of Origin), each Party shall provide that for a set classified as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

2. Notwithstanding paragraph 1, for a set classified as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 10 percent of the value of the set.

3. For the purposes of paragraph 2, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non-originating materials and the value of the good. 4. With respect to a textile or apparel good, Articles 6.1.4 and 6.1.5 (Rules of Origin and Related Matters) apply in place of paragraph 1.

Article 4.18. Transit and Transshipment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported outside the territories of the Parties, the good retains its originating status if the good:

(a) remains under customs control in the territory of a non-Party; and

(b) does not undergo an operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labeling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party.

Article 4.19. Non-Qualifying Operations

Each Party shall provide that a good shall not be considered to be an originating good merely by reason of:

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

(b) a production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

Chapter 5. ORIGIN PROCEDURES

Article 5.1. Definitions

For the purposes of this Chapter:

exporter means an exporter located in the territory of a Party and an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

identical goods means goods that are the same in all respects, including physical characteristics, quality, and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods);

importer means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good; and

value means value ofa good or material for purposes of calculating customs duties or for purposes of applying Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods).

Article 5.2. Claims for Preferential Tariff Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer, or importer (1) for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good.

2. An importing Party may:

(a) require that an importer who completes a certification of origin provide documents or other information to support the certification;

(b) establish in its law conditions that an importer shall meet to complete a certification of origin;

(c) if an importer fails to meet or no longer meets the conditions established under subparagraph (b), prohibit that importer from providing its own certification as the basis of a claim for preferential tariff treatment; or

(d) if a claim for preferential tariff treatment is based on a certification of origin completed by an importer, prohibit that importer from:

(i) issuing a certification, based on a certification of origin or a written representation completed by the exporter or producer, and

(ii) making a subsequent claim for preferential tariff treatment for the same importation, based on a certification of origin completed by the exporter or producer.

3. Each Party shall provide that a certification of origin:

(a) need not follow a prescribed format;

(b) contains a set of minimum data elements as set out in Annex 5-A (Minimum Data Elements) that indicate that the good is both originating and meets the requirements of this Chapter;

(c) may be provided on an invoice or any other document;

(d) describes the originating good in sufficient detail to enable its identification; and

(e) meets the requirements as set out in the Uniform Regulations.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party. However, a certification of origin shall not be provided on an invoice or any other commercial document issued in a non-Party.

5. Each Party shall provide that the certification of origin for a good imported into its territory may be completed in English, French, or Spanish. If the certification of origin is notin a language of the importing Party, the importing Party may require an importer to submit, upon request, a translation into such a language.

6. Each Party shall allow a certification of origin to be completed and submitted electronically and shall accept the certification of origin with an electronic or digital signature.

(1) For Mexico, implementation of paragraph 1 with respect to a certification of origin by the importer shall be no later than three years and six months after the date of entry into force of this Agreement.

Article 5.3. Basis of a Certification of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information, including documents, that demonstrate that the good is originating.

2. Each Party shall provide that ifthe exporter is not the producer of the good, the certification of origin may be completed by the exporter of the good on the basis of:

(a) having information, including documents, that demonstrate that the good is originating; or

(b) reasonable reliance on the producerâs written representation, such as in a certification of origin, that the good is originating.

3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of the importer having information, including documents, that demonstrate that the good is originating.

4. For greater certainty, nothing in paragraph 1 or 2 shall be construed to allow a Party to require an exporter or producer to complete a certification of origin or provide a certification of origin or a written representation to another person.

5. Each Party shall provide that a certification of origin may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.

6. Each Party shall provide that a certification of origin for a good imported into its territory be accepted by its customs administration for four years after the date the certification of origin was completed.

Article 5.4. Obligations Regarding Importations

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

(a) make a statement forming part of the import documentation based on a valid certification of origin that the good qualifies as an originating good;

(b) have a valid certification of origin in its possession at the time the statement referred to in subparagraph (a) is made;

(c) provide, on the request of the importing Partyâs customs administration, a copy of the certification of origin, in accordance with its laws and regulations;

(d) if a certification by the importer forms the basis for the claim, demonstrate, on request of the importing Party, that the good is originating under Article 5.3.3 (Basis of a Certification of Origin); and

(e) if the claim for preferential tariff treatment is based on a certification of origin completed by a producer that is not the exporter of the good, demonstrate, on the request of the importing Party, that the good certified as originating did not undergo further production or any other operation other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good into the territory of the importing Party.

2. Each Party shall provide that, if the importer has reason to believe that the certification of origin is based on incorrect information that could affect the accuracy or validity of the certification of origin, the importer shall promptly correct the importation document and pay any duties owing. The importer shall not be subject to penalties for making an incorrect statement that formed part of the import documentation, if it promptly corrects the importation document and pays any duties owing.

3. A Party may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article 4.18 (Transit and Transshipment) by providing:

(a) transportation documents, including the multimodal or combined transportation documents, such as bills of lading or waybills, indicating the shipping route and all points of shipment and transhipment prior to the importation of the good; and

(b) if the good is shipped through or transhipped outside the territories of the Parties, relevant documents, such as in the case of storage, storage documents or a copy of the customs control documents, demonstrating that the good remained under customs control while outside the territories of the Parties.

Article 5.5. Exceptions to Certification of Origin

Each Party shall provide that a certification of origin shall not be required if:

(a) the value of the importation does not exceed US$1,000 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish. A Party may require a written representation certifying that the good qualifies as an originating good; or

(b) it is an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a certification of origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of evading compliance with the importing Party's laws, regulations, or procedures governing claims for preferential tariff treatment.

Article 5.6. Obligations Regarding Exportations

1. Each Party shall provide that an exporter or producer in its territory that completes a certification of origin shall provide a copy of the certification of origin to its customs administration, on its request.

2. Each Party shall provide that if an exporter or a producer in its territory has provided a certification of origin and has reason to believe that it contains or is based on incorrect information, the exporter or producer shall promptly notify, in writing, every person and every Party to whom the exporter or producer provided the certification of origin of any change that could affect the accuracy or validity of the certification of origin.

3. No Party shall impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph 2 with respect to a certification of origin.

4. A Party may apply measures as the circumstances may warrant when an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

5. Each Party shall allow a certification of origin to be maintained in any medium and submitted electronically from the exporter or producer in the territory of a Party to an importer in the territory of another Party.

Article 5.7. Errors or Discrepancies

1. Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in it that do not create doubts concerning the correctness of the import documentation.

2. Each Party shall provide that if the customs administration of the Party into whose territory a good is imported determines that a certification of origin is illegible, defective on its face, or has not been completed in accordance with this Chapter, the importer shall be granted a period of not less than five working days to provide the customs administration with a copy of the corrected certification of origin.

Article 5.8. Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into its territory shall maintain, for a period of no less than five years from the date of importation of the good:

(a) the documentation related to the importation, including the certification of origin that served as the basis for the claim;

(b) all records necessary to demonstrate that the good is originating, if the claim was based on a certification of origin completed by the importer; and

(c) the information, including documents, necessary to demonstrate compliance with Article 5.4.1(e) (Obligations Regarding Importations), if applicable.

2. Each Party shall provide that an exporter or a producer in its territory that completes a certification of origin or a producer that provides a written representation shall maintain in its territory for five years after the date on which the certification of origin was completed, or for such longer period as the Party may specify, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin or other written representation is originating, including records associated with:

(a) the purchase of, cost of, value of, shipping of, and payment for, the good or material;

(b) the purchase of, cost of, value of, shipping of, and payment for all materials, including indirect materials, used in the production of the good or material; and

(c) the production of the good in the form in which the good is exported or the production of the material in the form in which it was sold.

3. Each Party shall provide in accordance with that Party's law that an importer, exporter, or producer in its territory may choose to maintain the records or documentation specified in paragraphs 1 and 2 in any medium, including electronic, provided that the records or documentation can be promptly retrieved and printed.

4. For greater certainty, the record keeping requirements on an importer, exporter, or producer that a Party provides for pursuant to this Article apply even if the importing Party does not require a certification of origin or if a requirement for a certification of origin has been waived.

Article 5.9. Origin Verification

1. For the purpose of determining whether a good imported into its territory is an originating good, the importing Party may, through its customs administration, conduct a verification of a claim for preferential tariff treatment by one or more of the following:

(a) a written request or questionnaire seeking information, including documents, from the importer, exporter, or producer of the good;

(b) a verification visit to the premises of the exporter or producer of the good in order to request information, including documents, and to observe the production process and the related facilities;

(c) for a textile or apparel good, the procedures set out in Article 6.6 (Verification); or (d) any other procedure as may be decided by the Parties.

2. The importing Party may choose to initiate a verification under this Article to the importer or the person who completed the certification of origin.

3. If an importing Party conducts a verification under this Article it shall accept information, including documents, directly from the importer, exporter, or producer.

4. If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer, and in response to a request for information by an importing Party to determine whether a good is originating in verifying a claim of preferential treatment under paragraph 1(a), the importer does not provide sufficient information to demonstrate that the good is originating, the importing Party shall request information from the exporter or producer under paragraph 1 before it may deny the claim for preferential tariff treatment. The importing Party shall complete the verification, including any additional request to the exporter or producer under paragraph 1, within the time provided in paragraph 15.

5. A written request or questionnaire seeking information, including documents, or a request for a verification visit, under paragraphs 1(a) or (b) shall:

(a) include the identity of the customs administration issuing the request;

(b) state the object and scope of the verification, including the specific issue the requesting Party seeks to resolve with the verification;

(c) include sufficient information to identify the good that is being verified; and

(d) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited and indicate:

(i) the legal authority for the visit,

(ii) the proposed date and location for the visit,

(iii) the specific purpose of the visit, and

(iv) the names and titles of the officials performing the visit.

6. If an importing Party has initiated a verification under paragraph 1(a) or 1(b) other than to the importer, it shall inform the importer of the initiation of the verification.

7. For a verification under paragraph 1(a) or 1(b), the importing Party shall:

(a) ensure that the written request for information, or documentation to be reviewed, is limited to information and documentation to determine whether the good is originating;

(b) describe the information or documentation in detail to allow the importer, exporter, or producer to identify the information and documentation necessary to respond;

(c) allow the importer, exporter, or producer at least 30 days from the date of receipt of the written request or questionnaire under paragraph 1(a) to respond; and

(d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(b) to consent to or refuse the request.

8. On request of the importing Party, the Party where the exporter or producer is located may, as it deems appropriate and in accordance with its laws and regulations, assist with the verification. This assistance may include providing information it has that is relevant to the origin verification. The importing Party shall not deny a claim for preferential tariff treatment solely on the grounds that the Party where the exporter or producer is located did not provide requested assistance.

9. If an importing Party initiates a verification under paragraph 1(b), it shall, at the time of the request for the visit under paragraph 5, provide a copy of the request to:

(a) the customs administration of the Party in whose territory the visit is to occur; and

(b) if requested by the Party in whose territory the visit is to occur, the embassy of that Party in the territory of the Party proposing to conduct the visit.

10. Each Party shall provide that, when the exporter or producer receives notification pursuant to paragraph 5, the exporter or producer may, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for a period not exceeding 30 days from the proposed date of the visit.

11. Each Party shall provide that, when its customs administration receives notification pursuant to paragraph 9, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the proposed date of the visit, or for a longer period as the relevant Parties may decide.

12. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 10 or 11.

13. Each Party shall permit an exporter or a producer whose good is subject to a verification visit by another Party to designate two observers to be present during the visit, provided that:

(a) the observers do not participate in a manner other than as observers;

(b) the failure of the exporter or producer to designate observers does not result in the postponement of the visit; and

(c) an exporter or producer of a good identifies to the customs administration conducting a verification visit any observers designated to be present during the visit.

14. The importing Party shall provide the importer, exporter, or producer that certified that the good was originating and is the subject of a verification, with a written determination of origin that includes the findings of facts and the legal basis for the determination. If the importer is not the certifier, the importing Party shall also provide that written determination to the importer.

15. The Party conducting a verification shall, as expeditiously as possible and within 120 days after it has received all the information necessary (2) to make the determination, provide the written determination under paragraph 14. Notwithstanding the foregoing, the Party may extend this period, in exceptional cases, for up to 90 days after notifying the importer, and any exporter or producer who is subject to the verification or provided information during the verification.

16. Prior to issuing a written determination under paragraph 14, if the importing Party intends to deny preferential tariff treatment, the importing Party shall inform the importer, and any exporter or producer who is subject to the verification and provided information during the verification, of the preliminary results of the verification and provide those persons with a notice of intent to deny that includes when the denial would be effective and a period of at least 30 days for the submission of additional information, including documents, related to the originating status of the good.

17. If verifications by a Party indicate a pattern of conduct by an importer, exporter, or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported, or produced by such person until that person establishes compliance with this Chapter, Chapter 4 (Rules of Origin), and Chapter 6 (Textile and Apparel Goods).

18. For the purposes of this Article and relevant articles of the Uniform Regulations, all communication to the exporter or

producer and to the customs administration of the Party of export will be sent by any means that can produce any confirmation of receipt. The specified time periods will begin from the date of receipt.

(2) This includes any information collected pursuant to a verification request to an exporter or producer.

Article 5.10. Determinations of Origin

1. Except as otherwise provided in paragraph 2 or Article 6.7 (Determinations), each Party shall grant a claim for preferential tariff treatment made under this Chapter on or after the date of entry into force of this Agreement.

2. The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify for preferential treatment;

(b) pursuant to a verification under Article 5.9 (Origin Verification), it has not received sufficient information to determine that the good qualifies as originating;

(c) the exporter, producer, or importer fails to respond to a written request or questionnaire for information, including documents, under Article 5.9 (Origin Verification);

(d) the exporter or producer fails to provide its written consent for a verification visit, in accordance with Article 5.9 (Origin Verification);

(e) the importer, exporter, or producer fails to comply with the requirements of this Chapter; or

(f) the exporter, producer, or importer of the good that is required to maintain records or documentation in accordance with this Chapter:

(i) fails to maintain records or documentation, or

(ii) denies access, if requested by a Party, to those records or documentation.

Article 5.11. Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

(a) make a claim for preferential tariff treatment;

(b) provide a statement that the good was originating at the time of importation;

(c) provide a copy of the certification of origin; and

(d) provide any other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

Article 5.12. Confidentiality

1. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential or it is confidential under the receiving Party's law, the receiving Party shall keep the information confidential in accordance with its law.

2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

3. A Party may use or disclose confidential information received from another Party under this Chapter but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

4. When a Party collects information from a trader under this Chapter, that Party shall apply the provisions set out in Article 7.22 (Protection of Trader Information) to keep the information confidential.

Article 5.13. Penalties

Each Party shall maintain criminal, civil, or administrative penalties for violations of its laws and regulations related to this Chapter.

Article 5.14. Advance Rulings Relating to Origin

1. In accordance with Article 7.5 (Advance Rulings), each Party, through its customs administration, shall, on request, provide for the issuance of a written advance ruling on origin under this Agreement.

2. Each Party shall adopt or maintain uniform procedures throughout its territory for the issuance of advance rulings on origin under this Agreement, including the common standards set out in the Uniform Regulations regarding the information required to process an application for a ruling.

Article 5.15. Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings by its customs administration related to origin under this Agreement as it provides to importers in its territory, to an exporter or producer:

(a) that completes a certification of origin for a good that has been the subject of a determination of origin under this Agreement; or

(b) that has received an advance ruling on origin under this Agreement pursuant to Article 5.14 (Advance Rulings Relating to Origin), and Article 7.5 (Advance Rulings).

Article 5.16. Uniform Regulations

1. The Parties shall, by entry into force of this Agreement, adopt or maintain through their respective laws or regulations, Uniform Regulations regarding the interpretation, application, and administration of this Chapter, Chapter 4 (Rules of Origin), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation) and other matters as may be decided by the Parties.

2. The Committee on Rules of Origin and Origin Procedures (Origin Committee) shall consult to discuss possible amendments or modifications to the Uniform Regulations.

3. In particular, the Origin Committee shall consult regularly to consider modifications or additions to the Uniform Regulations to reduce their complexity and provide practical and useful guidance to ensure better compliance with the rules and procedures of this Chapter, Chapter 4 (Rules of Origin), and Chapter 6 (Textile and Apparel Goods), including examples or guidance that would be of particular assistance to SMEs in the territories of the Parties.

4. The Origin Committee shall notify the Commission of any modification of or addition to the Uniform Regulations it decides.

5. Each Party shall implement any modification of or addition to the Uniform Regulations within a period that the Parties decide.

6. Each Party shall apply the Uniform Regulations in addition to the obligations in the Chapter.

Article 5.17. Notification of Treatment

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

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 5.9 (Origin Verification);

(b) a determination of origin that the Party is aware is contrary to: (i) a ruling issued by the customs administration of another Party, or

(ii) consistent treatment given by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs when calculating the net cost of a good, that has been the subject of a determination of origin;

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

(d) an advance ruling, or a ruling modifying or revoking an advance ruling, on origin under this Agreement, pursuant to Article 5.14 (Advance Rulings Relating to Origin), and Article 7.5 (Advance Rulings).

Article 5.18. Committee on Rules of Origin and Origin Procedures

1. The Parties hereby establish a Committee on Rules of Origin and Origin Procedures (Origin Committee), composed of government representatives of each Party, to consider any matters arising under this Chapter or Chapter 4 (Rules of Origin).

2. The Origin Committee shall consult regularly to ensure that this Chapter and Chapter 4 (Rules of Origin) are administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement.

3. The Origin Committee shall consult to discuss possible amendments or modifications to this Chapter or Chapter 4 (Rules of Origin), and in particular to the Product-Specific Rules of Origin in Annex 4-B, except Product-Specific Rules for textile and apparel goods, taking into account developments in technology, production processes, or other related matters. A Party may submit a proposed modification, along with supporting rationale and any studies to the other Parties for consideration. In particular, the Committee shall consider the possibility of cumulation with non-parties with which the Parties have trade agreements on a product by product basis.

4. Prior to the entry into force of an amended version of the Harmonized System, the Origin Committee shall consult to prepare updates to this Chapter and Chapter 4 (Rules of Origin), and in particular to the Product-Specific Rules of Origin in Annex 4-B, except for textiles and apparel goods, that are necessary to reflect changes to the Harmonized System.

5. With respect to a textile or apparel good, Article 6.8 (Committee on Textile and Apparel Trade Matters) applies in place of this Article.

Article 5.19. Sub-Committee on Origin Verification

1. The Parties hereby establish a Sub-Committee on Origin Verification, composed of government representatives of each Party, which will be a subcommittee of the Origin Committee.

2. The Sub-Committee shall meet at least once within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide or on request of the Commission or the Origin Committee.

3. The Sub-Committee's functions shall include:

(a) discussing and developing technical papers and sharing technical advice related to this Chapter or Chapter 4 (Rules of Origin) for the purposes of conducting verifications of origin;

(b) developing and improving the NAFTA 1994 Audit Manual and recommending verification procedures;

(c) developing and improving verification questionnaires, forms, or brochures; and

(d) providing a forum for the Parties to consult and endeavor to resolve issues relating to origin verification.

Chapter 6. TEXTILE AND APPAREL GOODS

Article 6.1. Rules of Origin and Related Matters

Application of Chapters 4 (Rules of Origin) and 5 (Origin Procedures)

1. Except as provided in this Chapter, Chapters 4 (Rules of Origin) and 5 (Origin Procedures) apply to textile and apparel goods.

De Minimis

2. A textile or apparel good classified in Chapters 50 through 60 or heading 96.19 of the Harmonized System that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 4-B (Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those materials is not more than 10 percent of the total weight of the good, of which the total weight of elastomeric content may not exceed 7 percent of the total weight of the good, and the good meets all the other applicable requirements of this

Chapter and Chapter 4 (Rules of Origin).

3. A textile or apparel good classified in Chapters 61 through 63 of the Harmonized System that contains non-originating fibers or yarns in the component of the good that determines the tariff classification of the good that do not satisfy the applicable change in tariff classification set out in Annex 4-B (Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those fibers or yarns is not more than 10 percent of the total weight of that component, of which the total weight of elastomeric content may not exceed 7 percent of the total weight of the good, and the good meets all the other applicable requirements of this Chapter and Chapter 4 (Rules of Origin).

Treatment of Sets

4. Notwithstanding the product-specific rules of origin set out in Annex 4-B (Product-Specific Rules of Origin), textile and apparel goods put up in sets for retail sale, classified as a result of the application of Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall not be originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set.

5. For the purposes of paragraph 4:

(a) the value of non-originating goods in the set shall be calculated in the same manner as the value of non-originating materials in Chapter 4 (Rules of Origin); and

(b) the value of the set shall be calculated in the same manner as the value of the good in Chapter 4 (Rules of Origin).

Article 6.2. Handmade, Traditional Folkloric, or Indigenous Handicraft Goods

1. An importing Party and an exporting Party may identify particular textile or apparel goods that they mutually agree are:

(a) hand-loomed fabrics of a cottage industry;

(b) hand-made cottage industry goods made of those hand-loomed fabrics;

(c) traditional folklore handicraft goods; or

(d) indigenous handicraft goods.

2. The goods identified pursuant to paragraph 1 shall be eligible for duty-free treatment by the importing Party provided that any requirements agreed by the importing and exporting Parties are met.

Article 6.3. Special Provisions

Annex 6-A (Special Provisions) sets out special provisions applicable to certain textile and apparel goods.

Article 6.4. Review and Revision of Rules of Origin

1. On request of a Party, the Parties shall consult to consider whether particular goods should be subject to different rules of origin to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties.

2. In the consultations, each Party shall consider the data presented by a Party showing substantial production in its territory of the particular good. The consulting Parties shall consider that substantial production has been shown if that Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner. With a view to concluding consultations without delay, the Parties shall endeavor to make an initial assessment of the evidence available regarding whether the fiber, yarn, or fabric is commercially available in the territories of the Parties promptly and to the extent possible within 90 days.

3. If, based on the initial assessment, the Parties agree that the fiber, yarn, or fabric is not commercially available, the Parties shall endeavor to reach agreement promptly on a corresponding proposed product-specific rule change and, as appropriate, proceed with their respective domestic procedures for implementation. The Parties shall endeavor to conclude consultations within 60 days after the initial assessment. An agreement between the Parties shall supersede any prior rule of origin for such good when approved by each Party in accordance with any necessary legal procedures of each Party.

Article 6.5. Cooperation

1. The Parties shall cooperate, through information sharing and other activities as provided for in Article 7.25 (Regional and

Bilateral Cooperation on Enforcement), Article 7.26 (Exchange of Specific Confidential Information), Article 7.27 (Customs Compliance Verification Requests), and Article 7.28 (Confidentiality between Parties), on matters related to trade in textile and apparel goods.

2. The Parties recognize that documents such as bills of lading, invoices, contracts of sale, purchase orders, packing lists, and other commercial documents are particularly important to detect, prevent, or address customs offenses related to trade in textile and apparel goods.

3. Each Party shall designate a contact point for information exchange and other cooperation activities related to trade in textile and apparel goods in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

Article 6.6. Verification

1. An importing Party may, through its customs administration, conduct a verification with respect to a textile or apparel good pursuant to Article 5.9 (Origin Verification), and the associated procedures, to verify whether a good qualifies for preferential tariff treatment, or through a request for a site visit as described in this Article. (1)

2. An importing Party may request a site visit under this Article from an exporter or producer of textile or apparel goods to verify whether:

(a) a textile or apparel good qualifies for preferential tariff treatment under this Agreement; or

(b) customs offenses with regard to a textile or apparel good are occurring or have occurred.

3. During a site visit under paragraph 2, an importing Party may request access to:

(a) records and facilities relevant to the claim for preferential tariff treatment; or

(b) records and facilities relevant to the customs offenses being verified.

4. If an importing Party seeks to conduct a site visit under paragraph 2, it shall provide the host Party, not later than 20 days prior to the date of the first visit to an exporter or producer, with:

(a) the proposed dates;

(b) the number and general location of exporters and producers to be visited in appropriate detail to allow the efficient and effective application of the provisions of paragraphs 7(a) and 7(b), but does not need to specify the names of the exporters or producers to be visited;

(c) whether assistance by the host Party will be requested and what type;

(d) the suspected customs offenses to be verified under paragraph 2(b), including relevant factual information available at the time of the notification related to the specific offenses, which may include historical information; and

(e) whether the importer claimed preferential tariff treatment.

5. If an importing Party seeks to conduct a site visit under paragraph 2, and does not provide the names of the exporters or producers 20 days prior to the site visit, it shall provide the host Party with a list of the names and addresses of the exporters or producers it proposes to visit, in a timely manner and prior to the date of the first visit to an exporter or producer under paragraph 2, to facilitate coordination, logistical support, and scheduling of the site visit.

6. The host Party shall promptly acknowledge receipt of the notification of a proposed site visit under paragraph 2, and may request information from the importing Party to facilitate planning of the site visit, such as logistical arrangements or provision of requested assistance.

7. If an importing Party seeks to conduct a site visit under paragraph 2:

(a) officials of the customs administration of the host Party may accompany the officials of the importing Party during the site visit;

(b) officials of the customs administration of the host Party may, in accordance with its laws and regulations, on request of the importing Party or on its own initiative, assist the officials of the importing Party during the site visit and provide, to the extent practicable, information relevant to conduct the site visit;

(c) the importing and the host Party shall limit communication regarding the site visit to relevant government officials and

shall not inform any person outside the government of the host Party in advance of a site visit or provide any other verification or other information not publicly available the disclosure of which could undermine the effectiveness of the action;

(d) the importing Party shall request permission from the exporter, producer, or a person having capacity to consent on behalf of the exporter or producer, either prior to the site visit if this would not undermine the effectiveness of the site visit or at the time of the site visit, to access the relevant records or facilities; and

(e) if the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer denies permission or access to the records or facilities, the site visit will not occur. If the exporter, producer, or a person having the capacity to consent on behalf of the exporter or producer is not able to receive the importing Party to carry out the site visit, the site visit shall be conducted on the following working day unless:

(i) the importing Party agrees otherwise, or

(ii) the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer, substantiates a valid reason acceptable to the importing Party that the site visit cannot occur at that time.

If the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer, does not have a valid reason acceptable to the importing Party that the site visit cannot take place on the following working day, the importing

Party may deem permission for the site visit or access to the records or facilities to be denied. The importing Party shall give consideration to any reasonable alternative proposed dates, taking into account the availability of relevant employees or facilities of the person visited.

8. On completion of a site visit under paragraph 2, the importing Party shall:

(a) on request of the host Party, inform the host Party of its preliminary findings;

(b) on receiving a written request from the host Party, provide the host Party with a written report of the results of the site visit, including any findings, no later than 90 days after the date of the request; and

(c) on receiving a written request of the exporter or producer, provide that person with a written report of the results of the site visit as it pertains to that exporter or producer, including any findings. This may be a report prepared under subparagraph (b), with appropriate changes. The importing Party shall inform the exporter or producer of the entitlement to request this report.

9. If an importing Party conducts a site visit under this Article and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it shall, prior to issuing a written determination, inform the importer and any exporter or producer that provided information directly to the importing Party, of the preliminary results of the verification and provide those persons with a notice of intent to deny that includes when the denial would be effective and a period of at least 30 days to submit additional information, including documents, to support the claim for preferential tariff treatment.

10. The importing Party shall not reject a claim for preferential tariff treatment on the sole grounds that the host Party does not provide requested assistance or information under this Article.

11. If verifications of identical textile or apparel goods by a Party indicate a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into its territory qualifies for preferential tariff treatment, the importing Party may withhold preferential tariff treatment to identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to the importing Party that those identical textile or apparel goods qualify for preferential tariff treatment. For the purposes of this paragraph, âidentical textile or apparel goodsâ means textile or apparel goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods.

(1) For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.

Article 6.7. Determinations

The importing Party may deny a claim for preferential tariff treatment for a textile or apparel good:

(a) for a reason listed in Article 5.10 (Determinations of Origin);

(b) if, pursuant to a site visit under Article 6.6.2 (Verification), it has not received sufficient information to determine that the textile or apparel good qualifies for preferential tariff treatment; or

(c) if, pursuant to a request for a site visit under Article 6.6.2 (Verification), a the importing Party is unable to conduct a site visit as access or permission for the site visit is denied, the importing Party is prevented from completing the site visit, or the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer does not provide access to the relevant records or facilities during a site visit.

Article 6.8. Committee on Textile and Apparel Trade Matters

1. The Parties hereby establish a Committee on Textile and Apparel Trade Matters, (Textiles Committee), composed of government representatives of each Party.

2. The Textiles Committee shall meet at least once within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide and on request of the Commission. The Committee shall meet at such verwes and times as the Parties decide.

3. The Textiles Committee may consider any matter arising under this Chapter, and its functions shall include review of the implementation of this Chapter, consultation on technical or interpretive difficulties that may arise under this Chapter, and discussion of ways to improve the effectiveness of cooperation under this Chapter.

4. The Textiles Committee shall assess the potential benefits and risks that may result from the elimination of existing restrictions on trade between the Parties in worn clothing and other worn articles classified in heading 63.09 of the Harmonized System, including the effects on business and employment opportunities, and on the market for textile and apparel goods, in each Party.

5. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare proposed updates to this Chapter that are necessary to reflect changes to the Harmonized System.

Article 6.9. Confidentiality

The provisions set out in Article 5.12 (Confidentiality) apply to the information collected from a trader or provided by another Party under this Chapter.

Chapter 7. CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Section A. Trade Facilitation

Article 7.1. Trade Facilitation

1. The Parties affirm their rights and obligations under the Agreement on Trade Facilitation, set out in Annex 1A to the WTO Agreement.

2. With a view to minimizing the costs incurred by traders through the importation, exportation, or transit of a good, each Party shall administer its customs procedures in a manner that facilitates the importation, exportation, or transit of a good, and supports compliance with its law.

3. The Parties shall discuss within the Trade Facilitation Committee established under Article 7.24 (Committee on Trade Facilitation) additional measures to facilitate trade. The Parties are encouraged to adopt additional measures that build on the obligations in this Chapter with a view to further facilitating trade.

Article 7.2. Online Publication

Each Party shall make available on a free, publicly accessible website the following information and update such information as necessary:

(a) an informational resource that describes the procedures and practical steps an interested person needs to follow for importation into, exportation from, or transit through the territory of the Party;

(b) the documentation and data that it requires for importation into, exportation from, or transit through its territory;

(c) its laws, regulations, and procedures for importation into, exportation from or transit through its territory;

(d) web links to all current customs duties, taxes, fees, and charges it imposes on or in connection with importation, exportation, or transit, including when the fee or charge applies, and the amount or rate;

(e) contact information for its enquiry point or points established or maintained pursuant to Article 7.4 (Enquiry Points);

(f) its laws, regulations, and procedures for becoming a customs broker, for issuing customs broker licenses, and regarding the use of customs brokers;

(g) informational resources that help an interested person understand their responsibilities when importing into, exporting from, or transiting goods through its territory, how to be compliant, and the benefits of compliance; and

(h) procedures to correct an error in a customs transaction, including the information to submit and, if applicable, the circumstances when penalties will not be imposed.

Article 7.3. Communication with Traders

1. To the extent possible, in accordance with its law, each Party shall publish, in advance, regulations of general application governing trade and customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts such regulations.

2. Each Party shall adopt or maintain a mechanism to regularly communicate with traders within its territory on its procedures related to the importation, exportation, and transit of goods. These communications shall provide traders with an opportunity to raise emerging issues and provide their views to the customs administration on these procedures.

Article 7.4. Enquiry Points

1. Each Party shall establish or maintain one or more enquiry points to respond to enquiries by interested persons concerning importation, exportation, and transit procedures.

2. A Party shall not require the payment ofa fee or charge for answering enquiries under paragraph 1. (1)

3. Each Party shall ensure that its enquiry points respond to enquiries within a reasonable period of time, which may vary depending on the nature or complexity of the request.

(1) For greater certainty, a Party may require payment of a fee or charge with respect to other enquiries requiring document search, duplication, and review in connection with requests in accordance with its laws and regulations providing public access to government records.

Article 7.5. Advance Rulings

1. Each Party shall, through its customs administration, issue a written advance ruling, prior to the importation of a good into its territory, that sets forth the treatment that the Party shall provide to the good at the time of importation.

2. Each Party shall allow an exporter, importer, producer, or any other person with a justifiable cause, or a representative thereof, to request a written advance ruling.

3. No Party shall as a condition for requesting an advance ruling, require an exporter or producer of another Party to establish or maintain a contractual or other relation with a person located in the territory of the importing Party.

4. Each Party shall issue advance rulings with regard to:

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;

(c) the origin of the good, including whether the good qualifies as an originating good under the terms of this Agreement;

(d) whether a good is subject to a quota or a tariff-rate quota; and

(e) other matters as the Parties may agree.

5. Each Party shall adopt or maintain uniform procedures throughout its territory for the issuance of advance rulings,

including a detailed description of the information required to process an application for a ruling.

6. Each Party shall provide that its customs administration:

(a) may, at any time during the course of an evaluation of a request for an advance ruling, request supplemental information from the person requesting the ruling or a sample of the good for which the advance ruling was requested;

(b) in issuing an advance ruling, take into account the facts and circumstances provided by the person requesting that ruling;

(c) issue the ruling as expeditiously as possible and in no case later than 120 days after it has obtained all necessary information from the person requesting an advance ruling; and

(d) provide to that person a full explanation of the reasons for the ruling.

7. Each Party shall provide that its advance rulings take effect on the date that they are issued or on a later date specified in the ruling, and remain in effect unless the advance ruling is modified or revoked.

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

9. An advance ruling issued by a Party shall apply throughout its territory to the person to whom the ruling is issued.

10. After issuing an advance ruling, the issuing Party may modify or revoke the advance ruling if there is a change in the law, facts, or circumstances on which the ruling was based, or if the ruling was based on inaccurate or false information, or on an error.

11. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of a post clearance audit or an administrative, judicial, or quasi-judicial review or appeal. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.

12. No Party shall apply retroactively a revocation or modification to the detriment of the requester unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions or the ruling was based on inaccurate or false information provided by the requester.

13. Each Party shall provide that, unless it retroactively applies a modification or revocation as described in paragraph 12, any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein.

14. The issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days if the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

15, Each Party shall, in accordance with its laws, regulations, and procedures, make its advance rulings, complete or redacted, available on a free, publicly accessible website.

Article 7.6. Advice or Information Regarding Duty Drawback or Duty Deferral Programs

Upon request from an importer in its territory, or an exporter or producer in the territory of another Party, a Party shall, within a reasonable timeframe, provide advice or information relevant to the facts contained in the request on the application of duty drawback or duty deferral programs that reduce, refund, or waive customs duties.

Article 7.7. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the immediate release of goods upon receipt of the customs declaration and fulfillment of all applicable requirements and procedures;

(b) provide for the electronic submission and processing of documentation and data, including manifests, in advance of the

arrival of the goods in order to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without requiring temporary transfer to warehouses or other facilities; and

(d) require that the importer be informed if a Party does not promptly release goods, including, to the extent permitted by its law, the reasons why the goods are not released and which border agency, if not the customs administration, has withheld release of the goods.

3. Each Party shall adopt or maintain procedures that provide for the release of goods prior to a final determination and payment of any customs duties, taxes, fees, and charges imposed on or in connection with importation of the goods, when these are not determined prior to or promptly upon arrival, provided that the goods are otherwise eligible for release and any security required by the importing Party has been provided.

4. If a Party allows for the release of goods conditioned ona security, it shall adopt or maintain procedures that:

(a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

(b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled or, for instruments covering multiple entries, until it is no longer required by the customs administration; and

(c) allow an importer to provide security using a non-cash financial instrument, including, if applicable, when an importer frequently enters goods, an instrument covering multiple entries.

5. Nothing in this Article requires a Party to release a good if its requirements for release have not been met nor prevents a Party from liquidating a security in accordance with its law.

6. Each Party shall allow, to the extent practicable, goods intended for import to be moved within its territory under customs control from the point of entry into the Party's territory to another customs office in its territory from where the goods are intended to be released, provided the applicable regulatory requirements are met.

Article 7.8. Express Shipments

1. Each Party shall adopt or maintain specific expedited customs procedures for express shipments while maintaining appropriate customs controls. These procedures shall:

(a) provide for information required to release an express shipment to be submitted and processed before the shipment arrives;

(b) allow a single submission of information, such as a manifest, covering all goods contained in an express shipment, through, if possible, electronic means;

(c) expedite the release of these shipments based on, to the extent possible, minimum documentation or a single submission of information;

(d) provide for these shipments, under normal circumstances, to be released immediately after arrival, provided that all required documentation and data are submitted;

(e) apply to shipments of any weight or value, recognizing that a Party may require formal entry procedures as a condition for release, including a declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

(f) provide that, under normal circumstances, no customs duties or taxes will be assessed at the time or point of importation or formal entry procedures required, (2) on express shipments of a Party valued at or below a fixed amount set out under the Party's law, provided that the shipment does not form part of a series of shipments carried out or planned for the purpose of evading duties or taxes, or avoiding any regulation applicable to the formal entry procedures required by the importing Party. The fixed amount set out under the Party's law shall be at least (3):

(i) for the United States, US$800,

(ii) for Mexico, US$117 for customs duties and US$50 for taxes, and

(iii) for Canada, C$150 for customs duties and C$40 for taxes.

For these shipments, each Party shall allow for the periodic assessment and payment of duties and taxes applicable at the time or point of importation.

2. Each Party shall adopt or maintain procedures that apply fewer customs formalities than those applied under formal entry procedures, to shipments valued at less than CAD$3,300 for Canada and US$2,500 for the United States and Mexico, provided that the shipments do not form part of a series of importations that may be reasonably considered to have been undertaken or arranged for the purpose of avoiding compliance by an importer with the importing Party's laws, regulations, or procedures related to formal entry.

3. Nothing in this Article prevents a Party from requiring the necessary information and documents as a condition for the release of goods, and from assessing customs duties or taxes for restricted or controlled goods.

(2) For greater certainty, this subparagraph shall not prevent a Party from requiring informal entry procedures, including applicable supporting documents.

(3) Notwithstanding the amounts set out under this subparagraph, a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Partyâs law is lower than that of the Party.

Article 7.9. Use of Information Technology

Each Party shall:

(a) use information technology that expedites procedures for the release of goods;

(b) make available by electronic means any declaration or other form that is required for import, export, or transit of goods through its territory;

(c) allow a customs declaration and related documentation to be submitted in electronic format;

(d) make electronic systems accessible to importers, exporters, persons engaged in the transit of goods through its territory, and other customs users in order to submit and teceive information;

(e) promote the use of its electronic systems to facilitate the communication between traders and its customs administration and other related agencies;

(f) adopt or maintain procedures allowing for the electronic payment of customs duties, taxes, fees, or charges imposed on or in connection with importation or exportation and collected by customs and other related agencies;

(g) use electronic risk management systems in accordance with Article 7.12 (Risk Management); and

(h) endeavor to allow an importer, through its electronic systems, to correct multiple import declarations previously submitted to the Party involving the same issue through a single submission.

Article 7.10. Single Window

1. Each Party shall establish or maintain a single window system that enables the electronic submission through a single entry point of the documentation and data the Party requires for importation into its territory.

2. Each Party shall review the operations of its single window system with a view to expanding its functionality to cover all its import, export, and transit transactions.

3. Each Party shall, in a timely manner, inform a person that is using its single window system of the status of the release of goods, through the single window system.

4. Ifa Party receives documentation or data for a good or shipment of goods through its single window system, the Party shall not request the same documentation or data for that good or shipment of goods, except in urgent circumstances or pursuant to other limited exceptions set out in its laws, regulations, or procedures. Each Party shall minimize the extent to which paper documents are required if electronic copies are provided.

5. In building and maintaining its single window system, each Party shall:

(a) incorporate, as appropriate, the World Customs Organization Data Model for data elements;

(b) endeavor to implement standards and data elements for import, export, and transit that are the same as the other Parties' single window system; and

(c) on an ongoing basis, streamline its single window system, including by adding functionality to facilitate trade, improve transparency, and reduce release times and costs.

6. In implementing paragraph 5, the Parties shall:

(a) share with each other their respective experiences in developing and maintaining their single window system; and

(b) work towards a harmonization, to the extent possible, of data elements and customs processes that facilitate use of a single transmission of information to both the exporting and importing Party.

Article 7.11. Transparency, Predictability, and Consistency In Customs Procedures

1. Each Party shall apply its customs procedures related to the importation, exportation, and transit of goods in a manner that is transparent, predictable, and consistent throughout its territory.

2. Nothing in this Article prevents a Party from differentiating its import, export, and transit procedures, and documentation and data requirements:

(a) based on the nature and type of goods, or their means of transport;

(b) based on risk management;

(c) to provide total or partial exemption to a good from customs duties, taxes, fees, or charges;

(d) to allow electronic filing, processing or payment; or

(e) in a manner consistent with Chapter 9 (Sanitary and Phytosanitary Measures) and the SPS Agreement.

3. Each Party shall review its import, export, and transit procedures, and documentation and data requirements, and, based on the results of the review, ensure, as appropriate, that these procedures and requirements are:

(a) adopted and applied with a view to a rapid release of goods;

(b) adopted and applied in a manner that aims at reducing the time, administrative burden, and cost of compliance with those procedures and those documentation and data requirements;

(c) the least trade restrictive, if two or more alternative measures are reasonably available to fulfil the Partyâs policy objectives; and

(d) not maintained, including parts thereof, if no longer required to fulfil the Partyâs policy objectives.

4. If a Party holds the original paper version of a document submitted for the importation into, exportation from, or transit through its territory, the Party shall not require an additional submission of the same document.

5. Each Party shall take into consideration, to the extent practicable and appropriate, relevant international standards and international trade instruments for the development of its customs procedures related to the importation, exportation and transit of goods.

6. Each Party shall adopt or maintain measures with a view to ensuring consistency and predictability for traders throughout its territory in the application of its customs procedures, including determinations on tariff classification and customs valuation of goods. These measures may include training of customs officials or issuing documents that serve to guide customs officials. If an inconsistency in the application ofits customs procedures, including determinations on tariff classification or customs valuation of goods, is discovered, the Party shall seek to resolve the inconsistency, if practicable.

Article 7.12. Risk Management

1. Each Party shall maintain a risk management system for assessment and targeting that enables its customs administration, and other agencies involved in the process for cross border trade, to focus inspection activities on high-risk goods and that simplifies the release and movement of low-risk goods.

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

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

4. In order to facilitate trade, each Party shall periodically review and update, as appropriate, its risk management system.

5. The Parties shall work towards strengthening their respective assessment of risk through improvements in compatibility of risk analysis and risk targeting systems, as appropriate.

Article 7.13. 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 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 records are audited of the audit results, the basis of the results, and the audited person's rights and obligations.

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

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

6. Each Party shall conduct a post-clearance audit in a manner that informs the trader with respect to laws, regulations, and procedures and promotes future compliance.

7. Each Party shall provide in its laws or regulations a fixed and finite period with respect to record-keeping obligations.

Article 7.14. Authorized Economic Operator - AEO

1. Each Party shall maintain a trade facilitation partnership program for operators who meet specified security criteria, hereinafter, referred to as Authorized Economic Operator (AEO) programs, in accordance with the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization.

2. The Parties shall endeavor to cooperate by:

(a) exchanging experiences on the operation of and improvements to their respective AEO programs, seeking to adopt, if appropriate, best practices;

(b) exchanging information with each other on the operators authorized by each program, in accordance with each Party's law and established processes; and

(c) collaborating in the identification and implementation of trade facilitation benefits for operators authorized by the other Parties.

Article 7.15. Review and Appeal of Customs Determinations

1. With a view to providing effective, impartial, and easily accessible procedures for review and appeal of administrative determinations on customs matters, each Party shall ensure that any person to whom a customs administration issues a determination has access to:

(a) an administrative appeal or a review of the determination by an administrative authority higher than or independent of the employee or office that issued the determination; and

(b) a quasi-judicial or judicial review or appeal of the determination or decision made at the final level of an administrative review.

2. Each Party shall provide a person to whom it issues an administrative determination with the reasons for the administrative determination and access to information on how to request reviews and appeals.

3. Each Party shall ensure that an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.

4. Each Party shall ensure that if a person receives a determination or decision on an administrative, quasi-judicial, or judicial review or appeal as provided under paragraph 1, that determination or decision shall be applicable in the same manner throughout the territory of the Party with respect to that person.

5. With a view to ensuring predictability for traders and consistent application of its customs laws, regulations, and procedural requirements, each Party is encouraged to apply determinations or decisions of administrative, quasi-judicial, and judicial authorities under paragraph 1 to the practices of its customs administration throughout its territory.

6. Each Party shall endeavor to allow a trader to file a request for administrative review or appeal to be conducted by the customs administration through electronic means.

Article 7.16. Administrative Guidance

1. Each Party shall adopt or maintain an administrative procedure by which a customs office in its territory may request the appropriate authority of the customs administration to provide guidance as to the proper application of laws, regulations, and procedures for importation into, exportation from, or transit through its territory with respect to a specific customs transaction, regardless of whether the transaction is prospective, pending, or has been completed. A customs office shall request guidance under this administrative procedure on its own initiative or at the written request of an importer or exporter in its territory, or a representative thereof.

2. The appropriate authority of a Party shall provide guidance in response to a request under paragraph 1 if the customs treatment applied or proposed to be applied by the customs office to the transaction is inconsistent with the customs treatment provided with respect to transactions that are identical in all material respects, including by another customs office in the territory of the Party.

3. Each Party shall make available to the public on a free, publicly accessible website the procedures, including any forms, for requesting guidance under paragraph 1.

4. Each Party shall allow an importer or exporter to whom a request under paragraph 1 relates an opportunity to submit written views and information to the appropriate authority of the customs administration before it issues guidance in response to a request.

5. Guidance in response to a request under paragraph 1 shall be taken into account by the customs office with respect to the transaction that is the subject of the request, provided that there is not a ruling or determination issued on the transaction and the facts and circumstances remain the same.

6. Nothing in this Article requires the appropriate authority of the customs administration to provide guidance on transactions for which a determination has been made, or for which a determination has been applied consistently throughout its territory; on transactions for which a determination is pending; if an importer or exporter has requested a ruling or has received a ruling that has been applied consistently throughout its territory; or on transactions for which a determination or ruling is being reviewed.

Article 7.17. Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a Party when the passage across the territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the Party across whose territory the traffic passes. Traffic of this nature is termed for purposes of this Article as "traffic in transit".

2. This Article does not apply to the operation of aircraft in transit, but applies to air transit of goods (including baggage).

3. Each Party's formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to:

(a) identify the goods in transit; and

(b) ensure that the Party's transit requirements have been met.

4. After a Party has authorized the goods to proceed from the point of entry through a Party's territory, the Party shall not apply customs charges or customs procedures, or conduct inspections, other than those necessary for specific law enforcement purposes under its law with respect to that traffic in transit, until the goods arrive at the point of exit from its territory.

5. Each Party shall provide for advance filing and processing of documentation and data required for transit prior to the arrival of goods.

6. Once traffic in transit has reached the point of exit from the territory of a Party and transit requirements have been met, the Party shall promptly terminate the transit operation.

7. A Party may require a guarantee or other security for traffic in transit, provided the use of the guarantee is limited to ensuring that obligations arising from such traffic in transit are fulfilled.

8. If a guarantee covers a transit operation, a Party shall allow use of a comprehensive guarantee that covers multiple transactions by the same operator.

9. If a Party requires a guarantee for traffic in transit, it shall discharge the guarantee without delay once it determines that its transit requirements have been satisfied.

10. Each Party shall publish information on how it sets the amount of a guarantee for traffic in transit.

11. If a Party limits the time for transiting its territory, it shall ensure that the time it allows is sufficient to accomplish the transit operation.

12. A Party shall not require the use of customs convoys or customs escorts for traffic in transit.

13. Each Party shall allow goods moving in transit to be imported into its territory provided the goods and appropriate information are presented to its customs administration and that the goods fulfil all applicable requirements for release under its law.

Article 7.18. Penalties

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for breach of its customs laws, regulations, or procedural requirements, including those governing tariff classification, customs valuation, transit procedures, country of origin, or claims for preferential treatment. Each Party shall ensure that such measures are administered in a uniform manner throughout its territory.

2. Each Party shall ensure that a penalty imposed by its customs administration 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 any penalty imposed by its customs administration for breach ofits customs laws, regulations, or procedural requirements depends on the facts and circumstances of the case, including any previous breaches by the person receiving the penalty, and be commensurate with the degree and severity of the breach.

4. Each Party shall provide that a clerical or minor error in a customs transaction, as set forth in its laws, regulations or procedures, published in accordance with Article 7.2 (Online Publication), shall not be treated as a breach of customs laws, regulations, or procedural requirements, and may be corrected without assessment of a penalty, unless the error is part of a consistent pattern of such errors by that person.

5. Each Party shall adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

6. Each Party shall ensure that when its customs administration imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, it provides an explanation in writing to the person on whom the penalty is imposed, specifying the nature of the breach, including the specific law, regulation, or procedural requirement concerned, and the basis for determining the penalty amount if not set forth specifically in the law, regulation, or procedural requirement.

7. Each Party shall provide that a person may correct an error in a customs transaction that is a potential breach of a customs law, regulation, or procedural requirement, excluding fraud, prior to the discovery of the error by the Party, if the person does so in accordance with the Party's laws, regulations, or procedures, and pays any owed customs duties, taxes, fees, and charges, including interest. The correction shall include the identification of the transaction and circumstances of the error. The Party shall not use this error to assess a penalty for a breach of a customs law, regulation, or procedural requirement.

8. Each Party shall specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedural requirement.

Article 7.19. Standards of Conduct

1. Further to Article 7.18 (Penalties) and Article 27.4 (Promoting Integrity among Public Officials), each Party shall adopt or maintain measures to deter its customs officials from engaging in any action that would result in, or that reasonably creates the appearance of, use of their public service position for private gain, including any monetary benefit.

2. Each Party shall provide a mechanism for importers, exporters, carriers, customs brokers and other stakeholders to submit complaints regarding perceived improper or corrupt behavior in its territory, including at ports of entry and other customs offices, of its customs administration personnel. Each Party shall take appropriate action on a complaint in a timely manner in accordance with its laws, regulations, or procedures.

Article 7.20. Customs Brokers

1. Each Party shall allow an importer and any other person it deems appropriate, in accordance with its laws and regulations, to self-file a customs declaration and other import or transit documentation without the services of a customs broker. For the purposes of electronic filing, self-filing shall include direct access or access through a service provider, to electronic systems for filing and transmitting customs declarations and other import or transit documentation. Each Party shall ensure that access to the electronic systems is available for self-filers on a non- discriminatory basis relative to other categories of users.

2. If a Party establishes requirements for qualifications, licensing, or registration to be a customs broker or to provide customs broker services, the Party shall ensure that the requirements are transparent, based on objective criteria related to providing customs broker services, promote integrity and professionalism among customs brokers, and are administered uniformly in its territory.

3. No Party shall impose arbitrary limits to the number of ports or locations at which a customs broker may operate. A Party shall allow a licensed customs broker to electronically submit a customs declaration and import documentation to the electronic systems referred to in paragraph 1, at any port at which it is licensed to operate in accordance with the preceding sentence.

Article 7.21. Border Inspections

1. The Parties shall cooperate with each other, as appropriate, with a view to facilitating trade through the promotion of efficient and effective processing of imports and exports through their ports of entry.

2. Each Party shall ensure that its customs administration and other relevant agencies that examine goods, conveyances, or instruments of international traffic, carry out examinations with appropriate coordination and, to the extent practicable, simultaneously within a single location, with a view to releasing goods and allowing conveyances and instruments of international traffic to enter its territory in a timely manner and immediately after the examinations have been completed, provided that all regulatory requirements have been met.

3. Pursuant to paragraphs 1 and 2, each Party is encouraged to develop and implement standard operating procedures amongst its customs administration and relevant agencies that examine goods, conveyances, or instruments of international traffic. If practicable, each Party is encouraged to adapt their border facilities to carry out the examinations specified in paragraph 2.

4. As appropriate, the Parties shall coordinate to develop procedures or facilities adjacent to ports of entry for the efficient movement of goods the processing of which requires specific accommodations with respect to facilities or examination.

5. Nothing in this Article requires a Party to provide services for the examination and release of goods for all types of goods at all ports of entry within its territory.

Article 7.22. Protection of Trader Information

1. Each Partyâs customs administration shall apply measures governing the collection, protection, use, disclosure, retention, correction, and disposal of information that it collects from traders.

2. Each Party's customs administration shall protect, in accordance with its law, confidential information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.

3. Notwithstanding paragraph 2, a Party may use or disclose confidential information but only for the purposes of

administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

4. If confidential information is used or disclosed other than in accordance with this Article, the Party shall address the incident, in accordance with its laws, regulations, or procedures, and strive to prevent a reoccurrence.

Article 7.23. Customs Initiatives for Trade Facilitation

1. The Parties shall cooperate in the development and implementation of customs initiatives telated to the trade facilitation measures described in this Section, as well as on other trade facilitation initiatives.

2. This cooperation may include information sharing or collaboration with respect to:

(a) best practices on the implementation of customs procedures;

(b) the management of customs and trade compliance measures;

(c) engagement between the customs administrations at the operational level to address issues related to regular cross-border operations and to resolve specific cases, including pending shipments;

(d) the development and implementation of procedures to facilitate cross border trade and improve customs operations related to the movement, release, and clearance of goods;

(e) the harmonization of cargo manifest data requirements in each mode of transportation;

(f) the implementation of programs designed to facilitate the movement of goods through their ports of entry, including, if feasible, alignment of hours of service, joint customs inspections, and the use of shared facilities; and

(g) the design, development, and construction of ports of entry located at their common borders.

Article 7.24. Committee on Trade Facilitation

1. The Parties hereby establish a Committee on Trade Facilitation (Trade Facilitation Committee), composed of government representatives of each Party.

2. The Trade Facilitation Committee shall:

(a) facilitate the exchange of information among the Parties with respect to their respective experiences regarding the development and implementation of a single window including information regarding each Party's participating border agencies and the automation of its forms, documents, and procedures;

(b) facilitate the exchange of information among the Parties regarding the formulation and implementation of, and experiences under, each Party's low-risk trader programs, including their AEO programs;

(c) provide a forum for the sharing of views on individual cases involving questions of tariff classification, customs valuation, other customs treatments, or emerging industry trends and issues, with a view to reconciling inconsistencies, supporting a competitive business environment, or otherwise facilitating trade and investment among the Parties;

(d) facilitate the exchange of information among the Parties regarding the formulation and implementation of, and experiences with, each Party's measures that promote voluntary compliance by traders;

(e) providing a forum for the Parties to consult and endeavor to resolve issues relating to this Chapter, including, as appropriate, in coordination or jointly with other committees or other subsidiary bodies established under this Agreement;

(f) review international initiatives on trade facilitation;

(g) identify initiatives for joint action by their respective customs administrations, in cases where joint action could facilitate trade among the Parties, and taking into account priorities and experiences of their customs administrations;

(h) discuss technical assistance and support for capacity building to enhance the impact of trade facilitation measures for traders, and in particular to identify priorities for this assistance and support among their customs administrations and outside North America; and

(i) engage in other activities as the Parties may decide.

3. The Trade Facilitation Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide.

4. The Parties are encouraged to provide opportunities for persons to provide input to each Party's representative to the Trade Facilitation Committee on matters relevant to the Committee's work, such as through the mechanism described in Article 7.3 (Communication with Traders).

Section B. Cooperation and Enforcement

Article 7.25. Regional and Bilateral Cooperation on Enforcement

1. The Parties agree to strengthen and expand their customs and trade enforcement efforts and cooperation as set out in this Section. In these efforts, the Parties may use any applicable mechanism, including bilateral cooperation mechanisms.

2. Each Party shall, in accordance with its laws and regulations, cooperate with other Parties for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offenses in the trade in goods between the Parties, including ensuring the accuracy of claims for preferential tariff treatment under this Agreement.

3. With a view to facilitating the effective operation of this Agreement, each Party shall:

(a) encourage cooperation with the other Parties regarding customs issues that affect goods traded between the Parties; and

(b) endeavor to provide the other Parties with advance notice of any significant administrative change, modification of a law or regulation, or other measure related to its laws or regulations that governs importations, exportations, or transit procedures that is likely to substantially affect the operation of this Agreement or likely to affect the effective implementation and enforcement of the customs and trade laws and regulations of a Party.

4. Each Party shall take appropriate measures, such as legislative, administrative, or judicial actions for enforcement of its laws, regulations, and procedures related to customs offenses, to enhance coordination between its customs administration and other relevant agencies and for cooperation with another Party.

5. The measures under paragraph 4 may include:

(a) specific measures, such as enforcement actions to detect, prevent, or address customs offenses, especially on identified customs priorities, taking into account trade data, including patterns of imports, exports, or transit goods to identify potential or real sources of these offenses;

(b) adopting or maintaining penalties aimed at deterring or penalizing customs offenses; and

(c) providing a Party's government officials with the legal authority to meet its enforcement obligations under this Agreement.

6. The Parties shall, subject to their respective laws, regulations and procedures, cooperate by sharing information, including exchanging historical data and if practicable and appropriate, data in real time with respect to imports, exports, and transit of goods to identify potential or real sources of customs offenses, especially on priority initiatives or industry sectors. Each Party shall identify and maintain the capability for the secure exchange of customs data with another Party.

7. Each Party shall, whenever practicable, and subject to its laws and regulations, provide another Party with information that has come to its attention that it believes would assist the receiving Party in detecting, preventing, or addressing potential or real customs offenses in particular those related to unlawful activities, including duty evasion, smuggling, and similar infractions. Such information may include specific data on any person suspected to be involved in unlawful activity, the mode of transportation, other relevant information, and the results of enforcement actions, application of penalties, or unusual trade patterns, both collected directly by the providing Party and received from other sources.

8. The Parties shall endeavor to cooperate, subject to their laws, regulations, and procedures, bilaterally or trilaterally, as appropriate, by developing customs enforcement initiatives, which may include the creation of task forces, joint or coordinated data analysis, and identification of special monitoring measures and other actions, to prevent, deter, and address customs offenses, particularly with respect to priorities of mutual concern.

Article 7.26. Exchange of Specific Confidential Information

1. For the purposes of enforcing or assisting in the enforcement of its respective measures concerning customs offenses, a

Party may request that another Party provide specific confidential information that is normally collected in connection with the importation, exportation, or transit of a good if the requesting Party has relevant facts indicating that a customs offense is occurring or is likely to occur.

2. A request under paragraph 1 shall be made in writing, electronically, or through another means that allows for the acknowledgement of receipt, and shall include a brief statement of the matter at issue, the information requested, the relevant facts indicating that a customs offense is occurring or is likely to occur, and sufficient information for the Party that receives a request to respond in accordance with its laws and regulations.

3. The Party that receives a request under paragraph 1 shall, subject to its laws, regulations, procedures, or other legal obligations, provide to the requesting Party a written response containing the requested information held by the Party as soon as practicable.

4. A Party may provide information under this Article in paper or electronic format.

5. In order to facilitate the rapid and secure exchange of information, each Party shall designate or maintain a contact point for cooperation under this Section in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

6. For the purposes of paragraph 1, relevant facts indicating that a customs offense is occurring or is likely to occur means historical evidence of non-compliance with laws or regulations, or other information that the requesting Party and the Party from which the information is requested agree is sufficient in the context of a particular request.

Article 7.27. Customs Compliance Verification Requests

1. A Party may request another Party to conduct a verification in that Party's territory to assist the requesting Party to determine whether a customs offence is occurring or has occurred by obtaining information, including documents, from an exporter or producer. The requesting Party shall make the request in writing. The requested Party shall respond to the request promptly and in no case later than 30 days after the date it receives the request. The response will include whether it will conduct the verification. If the Party does not intend to conduct the verification, the response will indicate the basis for refusal. If a Party will conduct the verification, the response will indicate the intended timing and other relevant details.

2. If the requested Party conducts a verification under paragraph 1, it shall provide the requesting Party promptly upon completing the verification a report containing the relevant information including data and documents, obtained during its verification.

3. In the case ofa site visit by the requested Party, the requesting Party may, through officials it designates and subject to the consent of a legally responsible person for the location visited, accompany the requested Party. Accompanying the requested Party does not create any legal authority for the designated officials of the requesting Party. The designated officials of the requesting Party shall fulfill the conditions and procedures mutually agreed between the relevant Parties for the visit. Nothing in this Agreement requires the requested Party to allow or facilitate the participation of the designated officials of the requesting Party.

Article 7.28. Confidentiality between Parties

1. If a Party provides information to another Party in accordance with this Section and designates the information as confidential or is confidential under the receiving Party’s law, the receiving Party shall keep the information confidential in accordance with its law.

2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

3. A Party may use or disclose confidential information received from another Party under this Section but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

Article 7.29. Sub-Committee on Customs Enforcement

1. The Parties hereby establish a Sub-Committee on Customs Enforcement (Customs Enforcement Sub-Committee), composed of government representatives of each Party, to address issues related to potential or real customs offenses.

(a) work to identify regional priorities of mutual concern and programs for detecting, preventing, and addressing duty evasion and other customs offenses;

(b) identify and discuss opportunities for the exchange of customs and trade information or data among the Parties that facilitates detecting, preventing, and addressing customs offenses;

(c) provide a forum to discuss proposed customs enforcement initiatives, including by identifying areas of coordination and cooperation, as appropriate, especially those related to detecting, preventing, and addressing customs offenses;

(d) facilitate the exchange of information of best practices on customs enforcement and in managing customs compliance;

(e) provide a forum to discuss technical guidance or assistance and support for capacity building, including specific training programs, in matters related to customs enforcement and compliance;

(f) provide a forum to discuss, with a view to identifying and enhancing joint customs enforcement and compliance initiatives on topics of mutual concern, including with respect to customs offenses, such as deterring duty evasion and circumvention of safeguards, antidumping, and countervailing duty laws and orders;

(g) identify appropriate government officials to address the matters raised in the Customs Enforcement Sub-Committee and share their contact information;

(h) inform the Trade Facilitation Committee about customs enforcement measures implemented by a Party that may have an impact on their customs procedures with respect to a matter covered by this Chapter; and

(i) engage in other matters related to customs offenses as the Parties may decide.

3. The Parties shall designate and notify a contact point for this Customs Enforcement Sub- Committee in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

4. The Customs Enforcement Sub-Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as the Parties may decide.

Chapter 8. RECOGNITION OF THE UNITED MEXICAN STATES' DIRECT, INALIENABLE, AND IMPRESCRIPTIBLE OWNERSHIP OF HYDROCARBONS

Article 8.1. Recognition of the United Mexican States' Direct, Inalienable, and Imprescriptible Ownership of Hydrocarbons

1. As provided for in this Agreement, the Parties confirm their full respect for sovereignty and their sovereign right to regulate with respect to matters addressed in this Chapter in accordance with their respective Constitutions and domestic laws, in the full exercise of their democratic processes.

2. In the case of Mexico, and without prejudice to their rights and remedies available under this Agreement, the United States and Canada recognize that:

(a) Mexico reserves its sovereign right to reform its Constitution and its domestic legislation; and

(b) Mexico has the direct, inalienable, and imprescriptible ownership of all hydrocarbons in the subsoil of the national territory, including the continental shelf and the exclusive economic zone located outside the territorial sea and adjacent thereto, in strata or deposits, regardless of their physical conditions pursuant to Mexico's Constitution (Constitución Política de los Estados Unidos Mexicanos).

Chapter 9. SANITARY AND PHYTOSANITARY MEASURES

Article 9.1. Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, mutatis mutandis, except as otherwise provided for in paragraph 2.

2. For the purposes of this Chapter:

competent authority means a government body of a Party responsible for measures or matters referred to in this Chapter;

import check means an inspection, examination, sampling, review of documentation, test, or procedure, including laboratory, organoleptic, or identity, conducted at the border or otherwise during the entry process by an importing Party or

its representative to determine if a consignment complies with the sanitary or phytosanitary requirements of the importing Party;

relevant international organizations means the Codex Alimentarius Commission, the World Organization for Animal Health, the International Plant Protection Convention, and other international organizations as decided by the Committee on Sanitary and Phytosanitary Measures established under Article 9.17 (SPS Committee);

relevant international standards, guidelines, or recommendations means those defined in paragraph 3(a) through (c) of Annex A of the SPS Agreement and standards, guidelines, or recommendations of other international organizations as decided by the SPS Committee;

risk management means the weighing of policy alternatives in light of the results of risk assessment and, if required, selecting and implementing appropriate controls, which may include sanitary or phytosanitary measures;

WTO SPS Committee means the WTO Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement.

Article 9.2. Scope

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 9.3. Objectives

1. The objectives of this Chapter are to:

(a) protect human, animal, or plant life or health in the territories of the Parties while facilitating trade between them;

(b) reinforce and build upon the SPS Agreement;

(c) strengthen communication, consultation, and cooperation between the Parties, and particularly between the Partiesâ competent authorities;

(d) ensure that sanitary or phytosanitary measures implemented by a Party do not create unnecessary barriers to trade;

(e) enhance transparency in and understanding of the application of each Party's sanitary and phytosanitary measures;

(f) encourage the development and adoption of science-based international standards, guidelines, and recommendations, and promote their implementation by the Parties;

(g) enhance compatability of sanitary or phytosanitary measures as appropriate; and

(h) advance science-based decision making.

Article 9.4. General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. Sanitary or phytosanitary measures which conform to the relevant provisions of this Chapter are presumed to be consistent with the obligations of the Parties under Chapter 2 (National Treatment and Market Access for Goods), which relate to the use of sanitary or phytosanitary measures, and Article XX(b) of the GATT 1994 as incorporated into Article 32.1 (General Exceptions).

3. Sanitary or phytosanitary measures which conform to relevant international standards, guidelines, and recommendations are deemed to be necessary to protect human, animal, or plant life or health, and presumed to be consistent with the relevant provisions of this Chapter, Chapter 2 (National Treatment and Market Access for Goods), which relate to the use of sanitary or phytosanitary measures, and Article XX(b) of the GATT 1994 as incorporated into Article 32.1 (General Exceptions).

Article 9.5. Competent Authorities and Contact Points

1. Each Party shall provide to the other Parties a list of its central level of government competent authorities. On request of a Party, and, if applicable, a Party shall provide contact information or written descriptions of the sanitary and phytosanitary

responsibilities of its competent authorities.

2. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

3. Each Party shall promptly inform the other Parties of any change in its competent authorities or contact points.

Article 9.6. Science and Risk Analysis

1. The Parties recognize the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles.

2. Each Party has the right to adopt or maintain sanitary and phytosanitary measures necessary for the protection of human, animal, or plant life or health, provided that those measures are not inconsistent with the provisions of this Chapter.

3. Each Party shall base its sanitary and phytosanitary measures on relevant international standards, guidelines, or recommendations provided that doing so meets the Party's appropriate level of sanitary or phytosanitary protection (appropriate level of protection). Ifa sanitary or phytosanitary measure is not based on relevant international standards, guidelines, or recommendations, or if relevant international standards, guidelines, or recommendations do not exist, the Party shall ensure that its sanitary or phytosanitary measure is based on an assessment, as appropriate to the circumstances, of the risk to human, animal, or plant life or health.

4. Recognizing the Parties' rights and obligations under the relevant provisions of the SPS Agreement, this Chapter does not prevent a Party from:

(a) establishing the level of protection it determines to be appropriate;

(b) establishing or maintaining an approval procedure that requires a risk assessment to be conducted before the Party grants a product access to its market; or

(c) adopting or maintaining a sanitary or phytosanitary measure on a provisional basis if relevant scientific evidence is insufficient.

5. If a Party adopts or maintains a provisional sanitary or phytosanitary measure if relevant scientific evidence is insufficient, the Party shall within a reasonable period of time:

(a) seek to obtain the additional information necessary for a more objective assessment of risk;

(b) complete the risk assessment after obtaining the requisite information; and

(c) review and, if appropriate, revise the provisional measure in light of the risk assessment.

6. Each Party shall ensure that its sanitary and phytosanitary measures:

(a) are applied only to the extent necessary to protect human, animal, or plant life or health;

(b) are based on relevant scientific principles, taking into account relevant factors, including, if appropriate, different geographic conditions;

(c) are not maintained if there is no longer a scientific basis;

(d) do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties; and

(e) are not applied in a mamner that constitutes a disguised restriction on trade between the Parties.

7. Each Party shall conduct its risk assessment and risk management with respect to a sanitary or phytosanitary regulation within the scope of Annex B of the SPS Agreement in a manner that is documented and provides the other Parties and persons of the Parties an opportunity to comment, in a manner to be determined by that Party.

8. In conducting its risk assessment and risk management, each Party shall:

(a) ensure that each risk assessment it conducts is appropriate to the circumstances of the risk to human, animal, or plant life or health, and takes into account the available relevant scientific evidence, including qualitative and quantitative data and information; and

(b) take into account relevant guidance of the WTO SPS Committee and the relevant international standards, guidelines, and recommendations of the relevant international organization.

9. Each Party shall consider, as a risk management option, taking no measure if that would achieve the Party's appropriate level of protection.

10. Without prejudice to Article 9.4 (General Provisions), each Party shall select a sanitary or phytosanitary measure that is not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate. For greater certainty, a sanitary or phytosanitary measure is not more trade restrictive than required unless there is another option that is reasonably available, taking into account technical and economic feasibility, that achieves the Party's appropriate level of protection and is significantly less restrictive to trade.

11. If an importing Party requires a risk assessment to evaluate a request from an exporting Party to authorize importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the requisite information from the exporting Party, the importing Party shall endeavor to facilitate the evaluation of the request for authorization by scheduling work on this request in accordance with the procedures, policies, resources, laws, and regulations of the importing Party.

12. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of a request to authorize trade, including the status of any risk assessment or other evaluation the Party requires to authorize trade, and of any delay that occurs during the process.

13. If the importing Party, as a result of a risk assessment, adopts a sanitary or phytosanitary measure that may facilitate trade between the Parties, the importing Party shall implement the measure without undue delay.

14. If a Party has reason to believe that a specific sanitary or phytosanitary measure adopted or maintained by another Party is constraining, or has the potential to constrain, its exports and the measure is not based on a relevant international standard, guideline, or recommendation, or a relevant standard, guideline, or recommendation does not exist, the Party adopting or maintaining the measure shall provide an explanation of the reasons and pertinent relevant information regarding the measure upon request by the other Party.

15. Without prejudice to Article 9.14 (Emergency Measures), no Party shall stop the importation of a good of another Party for the reason that the importing Party is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the other Party when the review was initiated. (1)

(1) For greater certainty, a Party is not stopping imports because it is undertaking a review if the Party stops imports on the basis that the review identifies that the information necessary to permit the importation of a good is lacking.

Article 9.7. Enhancing Compatibility of Sanitary and Phytosanitary Measures

1. Each Party recognizes that enhancing the compatibility of its sanitary and phytosanitary measures with the measures of another Party may facilitate trade while maintaining each Party's right to determine its appropriate level of protection.

2. To reduce unnecessary obstacles to trade, each Party shall endeavor to enhance the compatibility of its sanitary and phytosanitary measures with the sanitary and phytosanitary measures of the other Parties, provided that doing so does not reduce each Party's appropriate level of protection. In so doing, each Party:

(a) is encouraged to consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties in the development, modification, or adoption of their sanitary or phytosanitary measures; and

(b) shall have the objective, among others, of making its sanitary and phytosanitary measures equivalent or, if appropriate, identical to those of the other Parties, but only to the extent that doing either does not reduce the Party's appropriate level of protection.

Article 9.8. Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognize that adaptation to regional conditions, including regionalization, zoning, and compartmentalization, is an important means to facilitate trade.

2. The Parties shall endeavour to cooperate on the recognition of pest- or disease-free areas, and areas of low pest or

disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

3. In making a determination regarding regional conditions, each Party shall take into account the relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

4. If an importing Party receives from an exporting Party a request for a determination of regional conditions and determines that the exporting Party has provided sufficient information, the importing Party shall initiate an assessment without undue delay. For this purpose, each exporting Party shall provide reasonable access in its territory to the importing Party for inspection, testing, and other relevant procedures.

5. The importing Party shall inform the exporting Party of receipt of information provided by the exporting Party under paragraph 4. The importing Party shall evaluate the information provided by the exporting Party and shall inform the exporting Party whether the information is sufficient to evaluate a request for adaptation to regional conditions. The importing Party may request additional relevant information or an on-site verification, if justified, based on the results of the ongoing evaluation.

6. When an importing Party initiates an evaluation of a request for a determination of regional conditions under paragraph 4, that Party shall explain, on request of the exporting Party, its process for making the determination of regional conditions without undue delay.

7. On request from the exporting Party, the importing Party's competent authority shall consider whether a streamlined process may be used for the determination of regional conditions.

8. If the importing and exporting Parties' competent authorities decide that a request for a determination of regional conditions is a priority, and the importing Party has received sufficient information, as referenced in paragraph 4, the competent authorities involved shall establish reasonable timeframes based on the circumstances and may establish a work plan under which the importing Party, under normal circumstances (2), may finalize the determination. The determination may be positive or negative.

9. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the evaluation of the exporting Party's request for a determination of regional conditions.

10. The importing Party shall finalize the evaluation and all necessary stages involved for the determination of regional conditions of the exporting Party without undue delay once the importing Party's competent authority determines that it has received sufficient information from the exporting Party.

11. If the evaluation results in the recognition of specific regional conditions of an exporting Party, the importing Party shall communicate this determination to the exporting Party in writing and shall apply this recognition without undue delay.

12. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognize pest- or disease-free areas or areas of low pest and disease prevalence, the importing Party shall provide in writing to the exporting Party with the rationale for its determination.

13. The importing and exporting Parties involved in a particular determination of regional conditions may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

14. If there is an incident that results in a change of status, the exporting Party shall inform the importing Party. If the importing Party modifies or revokes the determination recognizing regional conditions as a result of the change in status, on request of the exporting Party, the Parties involved shall cooperate to assess whether the determination can be reinstated.

15. The Parties involved in a determination recognizing regional conditions shall, if mutually decided, report the outcome to the SPS Committee.

(2) For the purposes of this paragraph, "normal circumstances" do not include any extraordinary or unanticipated situations, such as unanticipated risks to human, animal, or plant life or health, or resource or regulatory constraints.

Article 9.9. Equivalence

1. The Parties recognize that a positive determination of equivalence of sanitary and phytosanitary measures is an important means to facilitate trade.

2. Further to Article 4 of the SPS Agreement, the Parties shall apply a recognition of equivalence to a specific sanitary or phytosanitary measure, or to the extent feasible and appropriate, to a group of measures or on a systems-wide basis. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures, or measures on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

3. On request of the exporting Party, the importing Party shall explain the objective and rationale of its sanitary or phytosanitary measure and identify the risk the sanitary or phytosanitary measure is intended to address.

4. When an importing Party receives a request for a determination of equivalence from an exporting Party and determines that the exporting Party has provided sufficient information, the importing Party shall initiate an assessment without undue delay.

5. When an importing Party initiates an equivalence assessment, the importing Party shall explain, on request of the exporting Party, and without undue delay, its process for making the determination of equivalence, and, if the determination results in recognition, its plan for enabling trade.

6. On request of the exporting Party, the importing Party's competent authority shall consider whether a streamlined process may be used to determine equivalence.

7. If the importing and exporting Parties' competent authorities decide that a request for a determination of equivalence is a priority, and the importing Party has received sufficient information, as referenced in paragraph 4, the competent authorities involved shall establish reasonable timeframes based on the circumstances and may establish a work plan under which the importing Party, under normal circumstances (3), may finalize the determination. The determination may be positive or negative.

8. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the equivalence assessment.

9. Once the importing Party determines that the information provided by the exporting Party is sufficient to finalize the assessment, the importing Party shall finalize the assessment and communicate the results of the assessment to the exporting Party without undue delay.

10. In determining equivalence, an importing Party shall take into account available knowledge, information, and relevant experience, including knowledge acquired through experience with the exporting Party's relevant competent authority.

11. An importing Party shall recognize the equivalence of a sanitary or phytosanitary measure, group of measures, or system, even if the measure, group of measures, or system differs from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure achieves the importing Party's appropriate level of protection, taking into account outcomes that the exporting Party's measure, group of measures, or system achieves.

12. If an importing Party adopts a measure that recognizes the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures, or measures on a systems-wide basis, the importing Party shall communicate that measure to the exporting Party in writing and implement the measure without undue delay.

13. The Parties involved in an equivalence determination that results in recognition shall, if mutually decided, report the outcome to the SPS Committee.

14. If an assessment does not result in the recognition of equivalence, the importing Party shall communicate that determination and its rationale to the exporting Party without undue delay.

15. If a Party plans to adopt, modify, or repeal a measure that is the subject of a sanitary or phytosanitary equivalence recognition, the following applies:

(a) The Party shall notify the other Party involved in the recognition of its plan. The notification should take place at an early appropriate stage where any comments submitted by the other Party can be taken into account, including by revising its plan. Upon request of a Party involved in the recognition, the Parties involved shall discuss whether the adoption, modification, or repeal of the measure may affect the equivalence recognition.

(b) The Party shall, upon request of the other Party, provide information and rationale concerning its planned adoption, modification, or repeal. The other Party shall review any information provided to it and submit any comments to the Party that plans to adopt, modify, or repeal the measure, without undue delay.

(c) The importing Party shall not revoke its recognition of equivalence on the basis that an adoption, modification, or repeal

of the measure is pending.

16. If a Party adopts, modifies, or repeals a measure that is the subject of a sanitary or phytosanitary recognition of equivalence, the importing Party shall maintain its recognition of equivalence provided that the exporting Party's measures concerning the good continue to achieve the appropriate level of protection of the importing Party. Upon request of a Party, the Parties involved in the recognition shall promptly discuss the determination made by the importing Party.

17. If a Party adopts, modifies, or repeals a measure that is the subject of a sanitary or phytosanitary recognition of equivalence, the importing Party shall:

(a) continue to accept the recognition of equivalence until it has communicated to the exporting Party whether other requirements must be met to maintain equivalence; and

(b) if other requirements under subparagraph (a) must be met, upon request, discuss those requirements with the exporting Party.

(3) For the purposes of this paragraph, "normal circumstances" do not include any extraordinary or unanticipated situations, such as unanticipated risks to human, animal or plant life or health, or resource or regulatory constraints.

Article 9.10. Audits (4)

1. To determine an exporting Party's ability to comply with the importing Party's sanitary or phytosanitary requirements or to verify an exporting Party's compliance with its sanitary or phytosanitary requirements that the importing Party has determined to be equivalent, the importing Party shall have the right to audit the exporting Party's competent authorities, including associated or designated inspection systems in accordance with this Article. That audit may include an assessment of the competent authorities' control programs, including, if appropriate and feasible, the inspection programs, audit programs, or on-site inspections of facilities or other agriculture production areas.

2. An audit must be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

3. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

4. Prior to the commencement of an audit, the auditing and audited Parties shall discuss: the rationale, objectives, and scope of the audit; and the criteria or requirements against which the audited Party will be assessed. Also at that time, the auditing and audited Parties shall decide the itinerary and procedures for conducting the audit.

5. Unless the auditing and audited Parties decide otherwise, the auditing Party shall hold an exit meeting at the end of the audit that includes an opportunity for the competent authority of the audited Party to raise questions or seek clarification on the preliminary findings and observations provided at the meeting.

6. The auditing Party shall provide the audited Party the draft written audit report, including its initial findings. The auditing Party shall provide the audited Party the opportunity to comment on the accuracy of the draft audit report and shall take any such comments into account before the auditing Party finalizes its report. The auditing Party shall provide a final audit report setting out its conclusions in writing to the audited Party within a reasonable period of time.

7. In undertaking an audit in cases in which an importing Party has recognized equivalence on a system-wide basis, the importing Party shall:

(a) conduct the audit to verify that the audited Party's system achieves an equivalent outcome to the sanitary or phytosanitary appropriate level of protection of the importing Party; and

(b) audit against the exporting Party's implementation of the equivalent oversight and control system.

8. If a Party has recognized another Party's system as equivalent, the competent authorities of the Parties involved in the recognition may discuss schedules of the audits of that system.

9. A decision or action taken by the auditing Party as a result of the audit must be supported by objective evidence and data that can be verified, taking into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party's regulatory controls. The auditing Party shall, on request of the audited Party, provide this objective evidence and data.

10. The costs incurred by the auditing Party shall be borne by the auditing Party, unless the auditing and audited Parties decide otherwise.

11. The auditing Party and audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

12. If the auditing Party makes a final audit report publicly available, the final audit report must incorporate, or be accompanied by, the comments or written response to the draft report provided by the competent authority of the audited Party.

13. The Parties may decide, if possible, to:

(a) collaborate on audits of non-Parties; or

(b) share the results of audits of non-Parties.

(4) For greater certainty, the Parties recognize that an inspection of a facility and other premises relevant to the inspection in a Party's territory in order to verify compliance with applicable sanitary or phytosanitary measures is a distinct activity from an audit and the provisions of this Article do not apply to that inspection.

Article 9.11. Import Checks

1. An importing Party may use import checks to assess compliance with its sanitary and phytosanitary measures and to obtain information to assess risk or to determine the need for, develop, or periodically review a risk-based import check.

2. Each Party shall ensure that its import checks are based on the risks associated with importations, and that its import checks are carried out without undue delay.

3. A Party shall make available to another Party, on request, information on its import procedures and its basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations.

4. A Party may change the frequency of its import checks as a result of experience gained through import checks or as a result of actions or discussions provided for in this Chapter.

5. An importing Party shall provide to another Party, on request, information regarding the analytical methods, quality controls, sampling procedures, and facilities that the importing Party uses to testa good. The importing Party shall ensure that any testing is conducted using appropriate and validated methods under a quality assurance program that is consistent with international laboratory standards. The importing Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample, and the analytical methods used on the test sample.

6. Each Party, with respect to any import check that it conducts, shall:

(a) limit any requirements regarding individual specimens or samples of an import to those that are reasonable and necessary;

(b) ensure that any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Party or non-Party and should be no higher than the actual cost of the service;

(c) use criteria for selecting facilities at which an import check is conducted:

(i) so that the location does not cause unnecessary inconvenience to an applicant or its agent, and

(ii) so that the integrity of the good is preserved, except for the individual specimens or samples obtained pursuant to the requirements referred to in subparagraph (a).

7. An importing Party shall ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure is limited to what is reasonable and necessary in response to the non-conformity.

8. If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the importing Party shall provide a notification, if practicable by electronic means, about the adverse result

to at least one of the following: the importer or its agent; the exporter; or the manufacturer.

9. When the importing Party provides a notification pursuant to paragraph 8, the Party shall:

(a) include in its notification:

(i) the reason for the prohibition or restriction,

(ii) the legal basis or authorization for the action, and

(iii) information on the status of the affected goods including, if applicable:

(A) relevant laboratory results and laboratory methodologies, if requested and possible to include;

(B) in the case of pest interceptions, an identification of the pests at the species level, if available; and

(C) information on the disposition of goods, if appropriate; and

(b) transmit the notification as soon as possible, and, in any event, under normal circumstances no later than five days after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration or subject to ongoing law enforcement action.

10. An importing Party that prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check shall provide an opportunity for a review of the decision and consider any relevant information submitted to assist in the review. (5) The review request and information should be submitted to the importing Party within a reasonable period of time.

11. Paragraph 9 does not prevent an importing Party from disposing of goods which are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal, or plant life or health in the Party's territory.

12. If an importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the pattern of non-conformity.

13. On request, an importing Party shall provide to the exporting Party available information on goods of the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party.

(5) For greater certainty, a Party shall provide an opportunity for review to at least one of the following: the importer or its agent, the exporter, or the manufacturer of the good, and the review shall be conducted by the customs administration or the relevant competent authority.

Article 9.12. Certification

1. The Parties recognize that assurances with respect to sanitary or phytosanitary requirements may be provided through means other than certificates.

2. Each Party shall ensure that at least one of the following conditions is satisfied before imposing a sanitary or phytosanitary certification requirement:

(a) the certification requirement is based on the relevant international standards; or

(b) the certification requirement is appropriate to the circumstances of risks to human, animal, or plant life or health at issue. (6)

3. If an importing Party requires certification for trade in a good, that Party shall ensure that the certification requirement is applied only to the extent necessary to meet its appropriate level of protection.

4. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

5. An importing Party shall limit attestations and information it requires on the certificates to essential information that is necessary to provide assurances to the importing Party that its appropriate level of protection has been met.

6. An importing Party shall provide to another Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.

7. The Parties may decide to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, taking into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

8. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

(6) For greater certainty, a certification requirement concerning non-sanitary or phytosanitary requirements, including the quality of a product or information relating to consumer preferences, does not constitute a certification requirement appropriate to the circumstances of a risk to human, animal, or plant life or health.

Article 9.13. Transparency

1. This Article applies to sanitary or phytosanitary measures that constitute sanitary or phytosanitary regulations for the purposes of Annex B of the SPS Agreement.

2. The Parties recognize the value of sharing information about their sanitary and phytosanitary measures on an ongoing basis, and of providing other Parties and persons of the Parties with the opportunity to comment on their proposed sanitary or phytosanitary measures.

3. In implementing this Article, each Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

4. A Party shall notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of another Party, including any that conforms to international standards, guidelines, or recommendations, by using the WTO SPS notification submission system as a means of notifying the other Parties.

5. Unless urgent problems of human, animal, or plant life or health protection arise or threaten to arise requiring the adoption of an emergency measure, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for the other Parties or persons of the Parties to provide written comments on the proposed measure, other than proposed legislation, after it makes the notification under paragraph 4. The Party shall consider any reasonable request from another Party or persons of the Parties to extend the comment period. On request of another Party, the Party shall respond to the written comments of the other Party in an appropriate manner.

6. The Party shall make available on a free, publicly available website or official journal, the proposed sanitary or phytosanitary measure notified under paragraph 4, the legal basis for the measure, and the written comments or a summary of the written comments that the Party has received from the public on the proposed measure.

7. If a Party proposes a sanitary or phytosanitary measure that does not conform to a relevant international standard, guideline, or recommendation, the Party shall provide to another Party, on request, the relevant documentation that the Party considered in developing the proposed measure, including documented and objective scientific evidence related to the measure, such as risk assessments, relevant studies, and expert opinions.

8. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with another Party, on request and when appropriate during its regulatory process, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the Partyâs appropriate level of protection.

9. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official journal or website.

10. Each Party shall notify the other Parties of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Each Party shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. A Party shall also make available to another Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, significant written comments and relevant documentation considered to support the measure that were received during the comment period.

11. If a final sanitary or phytosanitary measure is substantively altered from the proposed measure, a Party shall also include in the notice of the final sanitary or phytosanitary measure that it publishes, an explanation of:

(a) the objective and rationale of the measure and how the measure advances that objective and rationale; and

(b) any substantive revisions that it made to the proposed measure.

12. An exporting Party shall notify the importing Party through the contact points referred to in Article 9.5 (Competent Authorities and Contact Points) in a timely and appropriate manner:

(a) if it has knowledge of a significant sanitary or phytosanitary risk related to the export of a good from its territory;

(b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;

(c) of significant changes in the status of a regionalized pest or disease;

(d) of new scientific findings of importance which affect the regulatory response with respect to food safety, pests, or diseases; and

(e) of significant changes in food safety, pest, or disease management, control or eradication policies or practices that may affect trade.

13. If feasible and appropriate, a Party shall normally provide an interval of not less than six months between the date it publishes a final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to address an urgent problem of human, animal, or plant life or health protection or the measure facilitates trade.

14. A Party shall make available to another Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.

Article 9.14. Emergency Measures

1. If an importing Party adopts an emergency measure to address an urgent problem of human, animal or plant life or health that arises or threatens to arise, and applies it to the exports of another Party the importing Party shall promptly notify in writing each affected Party of that measure through the normal channels. The importing Party shall take into consideration any information provided by an affected Party in response to the notification.

2. If an importing Party adopts an emergency measure under paragraph 1, it shall review the scientific basis of that measure within six months and make available the results of the review to any Party on request. If the emergency measure is maintained after the review, because the reason for its adoption remains, the Party should review the measure periodically.

Article 9.15. Information Exchange

A Party may request information from another Party on a matter arising under this Chapter. A Party that receives a request for information shall endeavor to provide available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

Article 9.16. Cooperation

1. The Parties shall explore opportunities for further cooperation, collaboration, and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter. Those opportunities may include trade facilitation initiatives and technical assistance. The Parties shall cooperate to facilitate the implementation of this Chapter.

2. The Parties shall cooperate and may work, as mutually decided, on sanitary and phytosanitary matters, including to develop as appropriate, common principles, guidelines, and approaches on matters covered by this Chapter, with the goal of eliminating unecessary obstacles to trade between the Parties.

3. If mutually decided, the Parties shall share information on their respective approaches to risk management with the objective of enhancing the compatibility of their risk management approaches.

4. The Parties are encouraged to create and develop initiatives to facilitate and promote the compatibility of their sanitary or phytosanitary measures.

5. If there is mutual interest and with the objective of establishing a common scientific foundation for each Party's risk management approach, the competent authorities of the Parties are encouraged to:

(a) share best practices on their respective approaches to risk analysis;

(b) cooperate on joint scientific data collection;

(c) if feasible and appropriate, undertake science-based joint risk assessments;

(d) if applicable and in accordance with the procedures, policies, resources, laws, and regulations of each Party, provide access to their respective completed risk assessments and the data used to develop risk assessments; or

(e) if appropriate, cooperate on aligning data requirements for risk assessments.

Article 9.17. Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, composed of government representatives of each Party responsible for sanitary and phytosanitary matters.

2. The SPS Committee shall serve as a forum:

(a) to consider any matter related to this Chapter, including relating to its implementation;

(b) to improve the Parties' understanding of sanitary or phytosanitary issues that relate to the implementation of the SPS Agreement or this Chapter;

(c) to enhance mutual understanding of each Party's sanitary or phytosanitary measures or the regulatory processes that relate to those measures;

(d) to enhance communication and cooperation among the Parties related to sanitary or phytosanitary matters;

(e) to identify and discuss, at an early appropriate stage, proposed sanitary or phytosanitary measures or revisions to existing sanitary or phytosanitary measures that may have a significant effect on trade in North America including for the purposes of issue avoidance and facilitating greater alignment of sanitary or phytosanitary measures; and

(f) for a Party to share information, as appropriate, on a sanitary or phytosanitary matter that has arisen between it and another Party or Parties.

3. The SPS Committee may serve as a forum:

(a) if appropriate, to identify and develop technical assistance and cooperation projects between the Parties on sanitary and phytosanitary measures;

(b) to consult on matters and positions for meetings of the WTO SPS Committee, and meetings held under the auspices of the Codex Alimentarius Commission, the World Organisation for Animal Health, the International Plant Protection Convention, and other international organizations as appropriate;

(c) to identify, prioritize, manage, and resolve bilateral or trilateral issues;

(d) to review progress on addressing specific trade concerns related to the application of a sanitary or phytosanitary measure, with a view to facilitating mutually acceptable solution;

(e) to establish and, as appropriate, determine the scope and mandate of technical working groups in areas such as, animal health, plant health, food safety, or pesticides, taking into account existing mechanisms, to undertake work related to the implementation of this Chapter;

(f) to provide guidance to technical working groups, as needed and appropriate, for the identification, prioritization, and management of sanitary or phytosanitary matters;

(g) to request updates and discuss the work of the technical working groups;

(h) to review the recommendation from a technical working group regarding whether it should be continued, suspended, or dissolved;

(i) to seek, to the extent practicable, the assistance of relevant international or regional organizations, such as the North American Plant Protection Organization, to obtain available scientific and technical advice and minimize duplication of effort; and

(j) to facilitate the development, as appropriate, of common principles, guidelines and approaches on matters covered by this Chapter.

4. The SPS Committee shall establish its terms of reference at its first meeting and may revise those terms of reference as needed.

5. The SPS Committee shall meet within one year of the date of entry into force of this Agreement and once a year thereafter unless the Parties decide otherwise.

6. The SPS Committee shall report annually to the Commission on the implementation of this Chapter.

Article 9.18. Technical Working Groups

1. A Technical Working Group may function on an on-going or ad hoc basis.

2. Any on-going technical working group shall meet on an annual basis unless otherwise decided by the Parties participating in the technical working group. Any ad hoc technical working group shall meet as frequently as decided by the Parties participating in the technical working group.

3. At the first meeting of a technical working group, the participating Parties shall establish the working group's terms of reference, unless the Parties decide otherwise.

4. Any technical working group established under Article 9.17.3(e) (Committee on Sanitary and Phytosanitary Measures) may:

(a) engage, at the earliest appropriate stage, in scientific or technical exchange and cooperation regarding sanitary or phytosanitary matters;

(b) consider any sanitary or phytosanitary measure or set of measures identified by any Party that are likely to affect, directly or indirectly, trade, and provide technical advice with a view to facilitating the resolution of specific trade concerns relating to those measures;

(c) serve as a forum to facilitate discussion and consideration of specific risk assessments and possible risk management options;

(d) provide an opportunity for Parties to discuss developments relevant to the work of the technical working group;

(e) discuss other issues related to this Chapter; and

(f) report to the SPS Committee on progress of work, as appropriate.

5. A technical working group may provide the SPS Committee with the recommendation that it be continued, suspended, or dissolved.

6. Each technical working group shall be co-chaired by representatives of the participating Parties.

7. The Parties may seek to resolve any specific trade concern through the relevant technical working group.

Article 9.19. Technical Consultations

1. Recognizing that trade matters arising under this Chapter are best resolved by the appropriate competent authority, if a Party has concerns regarding any matter arising under this Chapter with respect to another Party, the Party shall endeavor to resolve the matter through available administrative procedures of the relevant competent authority or through a relevant technical working group established by the SPS Committee, if it considers that it is appropriate to do so. A Party may have recourse to technical consultations set out in paragraph 2 at any time it considers that the use of the relevant administrative procedures, the relevant technical working group, or other mechanisms would not resolve the matter.

2. A Party (requesting Party) may initiate technical consultations with another Party (responding Party) to discuss any matter arising under this Chapter that may adversely affect its trade by delivering a written request to the Contact Point of the responding Party. The request shall identify the reason for the request, including a description of the requesting Party's concerns about the matter.

3. The requesting and responding Parties shall meet within 30 days of the responding Party's receipt of the request, with the aim of resolving the matter cooperatively within 180 days of the request if possible.

4. The requesting and responding Parties shall ensure the appropriate involvement of relevant trade representatives and competent authorities in meetings held pursuant to this Article.

5. Recognizing that Parties may decide to engage in consultations pursuant to this Article for any length of time, the requesting Party may cease technical consultations under this Article and have recourse to dispute settlement under Chapter 31 (Dispute Settlement) following the meeting referred to in paragraph 3 or if the meeting is not held within 30 days as specified in paragraph 3.

6. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter through technical consultations in accordance with this Article.

Article 9.20. Dispute Settlement

In a dispute under this Chapter that involves scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the disputing Parties. To this end, the panel may, if it deems appropriate, establish an advisory technical experts group, or consult the relevant international standard setting organizations, at the request of a disputing Party or on its own initiative.

Chapter 10. TRADE REMEDIES

Section A. Safeguards

Article 10.1. Definitions

For the purposes of this Section:

competent investigating authority means:

(a) for Canada, the Canadian International Trade Tribunal, or its successor;

(b) for Mexico, the International Trade Practices Unit of the Secretaria de Economia, or its successor; and

(c) for the United States, the United States International Trade Commission, or its successor;

Article 10.2. Rights and Obligations

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

(a) imports from a Party, considered individually, account for a substantial share of total imports; and

(b) imports from a Party considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

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

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

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

4. A Party shall, without delay, deliver written notice to the other Parties of the institution of a proceeding that may result in

emergency action under paragraph 1 or 3.

5. No Party may impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the Party or Parties against whose good the action is proposed to be taken, as far in advance of taking the action as practicable; and

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

6. The Party taking an action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 10.3. Administration of Emergency Action Proceedings

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

Section B. Antidumping and Countervailing Duties

Article 10.4. Definitions

For purposes of this Section and Annex 10-A (Practices Relating to Antidumping and Countervailing Duty Proceedings):

confidential information means information that is provided to an investigating authority on a confidential basis and that is by its nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), whether in its original form or in a form other than the one in which it was originally provided;

interested party (1) means:

(a) an exporter, foreign producer, or importer of a product subject to a proceeding, or a trade or business association a majority of the members of which are producers, exporters, or importers of such product;

(b) the government of the exporting Party;

(c) a producer of the like product in the territory of the importing Party, or a trade and business association a majority of the members of which produce the like product in the territory of the importing Party; or

(d) any other person treated as an interested party by the investigating authority of the importing Party;

investigating authority means any authority of a Party that conducts antidumping or countervailing duty proceedings;

proceeding means:

(a) for Mexico, an antidumping or countervailing duty investigation, review, or other relevant set of formalities and acts provided by the legal system which precede the issuance of the administrative act conducted by an investigating authority; and

(b) for Canada and the United States, all segments of a proceeding, and begins on the date of the formal filing of an antidumping or countervailing duty application, or the publication of a notice of initiation in a self-initiated investigation, and ends with the conclusion of all administrative action pertaining to the product under consideration. For Canada, the formal filing of an antidumping or countervailing duty application corresponds to the determination that a complaint is properly documented;

responding party means:

(a) for Canada and Mexico, a person or entity that an investigating authority of a Party requires to respond to an antidumping or countervailing duty questionnaire or any other request; and

(b) for the United States, a producer, manufacturer, exporter, importer, or, where appropriate, a government or government entity, that an investigating authority of a Party requires to respond to an antidumping or countervailing duty questionnaire; and

segment of a proceeding means for Canada and the United States, (2) an antidumping or countervailing duty investigation, review, or other relevant action conducted by an investigating authority. For Canada, relevant actions conducted by an investigating authority do not cover duty assessment and related procedures.

(1) For greater certainty, an entity or person may be an interested party as long as they fulfill all the corresponding requirements, if any, provided in the law of the importing Party.

(2) For Mexico, "segment of a proceeding" does not apply.

Article 10.5. Rights and Obligations

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement.

2. Except as provided in Annex 10-A (Practices Relating to Antidumping and Countervailing Duty Proceedings), nothing in this Agreement shall be construed to confer any rights or impose any obligations on the Parties with respect to antidumping or countervailing duty proceedings or measures taken pursuant to Article VI of GATT 1994, the AD Agreement, or the SCM Agreement.

3. No Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Section or Annex 10-A (Practices Relating to Antidumping and Countervailing Duty Proceedings).

Section C. Cooperation on Preventing Duty Evasion of Trade Remedy Laws

Article 10.6. General

1. The Parties recognize their shared concerns regarding duty evasion (3) of antidumping, countervailing, and safeguard duties, and the importance of cooperation, including through information sharing, to combat duty evasion.

2. The Parties agree to strengthen and expand their customs and trade enforcement efforts in matters related to duty evasion, and to strengthen their cooperation as set out in the Article 10.7 (Duty Evasion Cooperation).

(3) For purposes of this Section, "duty evasion" refers to evasion of antidumping, countervailing, or safeguards duties.

Article 10.7. Duty Evasion Cooperation

1. Each Party shall, in accordance with its law cooperate with the other Parties for the purposes of enforcing or assisting in the enforcement of their respective measures concerning duty evasion.

2. Each Party shall, subject to its law, share customs information with the other Parties pertaining to imports, exports, and transit transactions, to help enable the Parties to combat duty evasion and conduct joint or coordinated analysis and investigations of suspected duty evasion. In addition, each Party shall maintain a mechanism through which it can share information with the other Parties regarding entries that may involve evasion of antidumping, countervailing, or safeguard duties, including the information described in paragraph 3. The information referred to in this paragraph may be trader-specific or it may include an industry sector or group of traders.

3. Each Party shall, subject to its law and on the request of another Party, provide the requesting Party with information collected in connection with the imports, exports and transit, and other relevant information that it has or can reasonably obtain, that will help enable the requesting Party to determine whether an entry into its territory is subject to antidumping, countervailing, or safeguard duties imposed by the requesting Party. (4)

4. A request for information described in paragraph 3 shall be made in writing, by the customs administration of the requesting Party to the customs authority of the requested Party, by electronic means or any other acceptable method, and shall include sufficient information for the requested Party to respond.

5. A Party may request in writing that another Party conduct a duty evasion verification (5) in the requested Party's territory for the purposes of obtaining information, including documents, from an exporter or producer, to enable the requesting Party to determine whether a particular entry into the requesting Party's territory is subject to antidumping, countervailing, or safeguard duties imposed by the requesting Party. The requested Party shall respond to the request promptly and in any case no later than 30 days after the date it receives the request. The response must include whether it will conduct the duty evasion verification. If the Party does not intend to conduct the duty evasion verification, the response must indicate the basis for refusal. If a Party will conduct the duty evasion verification, the response must indicate the intended timing and other relevant details.

6. If the requested Party conducts a duty evasion verification under paragraph 5 it shall provide the requesting Party promptly on completing the duty evasion verification a report containing the relevant information including data and documents, obtained during its duty evasion verification.

7. Regardless of whether a request to conduct a verification was made under paragraph 5, a duty evasion verification may be conducted in the relevant facilities located in the territory of the requested Party, as a result of a request. The requested Party normally shall grant the other Party access to its territory to participate in the duty evasion verification, absent extraordinary circumstances, provided that:

(a) the duty evasion verification is subject to mutually agreed conditions and procedures between the Parties; (6)

(b) the requesting Party gives reasonable advance notice to the requested Party before the proposed date of the duty evasion verification; and

(c) the parties to be verified in the requested Party consent to the duty evasion verification.

8. Each Party shall maintain procedures that permit the sharing of confidential information with the other Parties, as a result of a request under paragraph 3 or a duty evasion verification report under paragraph 6, for the limited purpose of determining if duty evasion exists. If a Party, or a verified party, provides information to another Party in accordance with this Section and designates the information as confidential or is confidential under the receiving Party's law, such receiving Party shall keep the information confidential in accordance with its law. If the receiving Party has not kept the information confidential in accordance with its law, a Party may decline to provide information requested by another Party in future requests for confidential information. The receiving Party may use or disclose confidential information received from the other Party under this Section but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

(4) For greater certainty, nothing in this Section shall be construed as an obligation on the requested Party to provide an original or copy of an export declaration submitted to its customs administration.

(5) For greater certainty, a duty evasion verification visit to facilities located in the territory of a requested Party shall be subject to paragraph 7.

(6) For the purposes of subparagraph (a), the Parties may agree to use any applicable mechanism, including existing bilateral cooperation mechanisms.

Section D. REVIEW AND DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY MATTERS

Article 10.8. Definitions

For purposes of this Section and Annex 10-B.1 (Establishment of Binational Panels), Annex 10-B.2 (Panel Procedures under Article 10.11), Annex 10-B.3 (Extraordinary Challenge Procedure), Annex 10-B.4 (Special Committee Procedures), and Annex 10-B.5 (Amendments to Domestic Laws):

administrative record means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

(a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of ex parte meetings as may be required to be kept;

(b) acopy of the final determination of the competent investigating authority, including reasons for the determination;

(c) all transcripts or records of conferences or hearings before the competent investigating authority; and

(d) all notices published in the official journal of the importing Party in connection with the administrative proceeding;

antidumping statute means:

(a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;

(b) in the case of Mexico, the relevant provisions of the Foreign Trade Act (Ley de Comercio Exterior), as amended, and any successor statutes;

(c) in the case of the United States, the relevant provisions of Title VII of the Tariff Act of 1930, as amended, and any successor statutes ; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b), or (c), or indicates the standard of review to be applied to such determinations;

competent investigating authority means:

(a) in the case of Canada:

(i) the President of the Canada Border Services Agency as defined in the Special Import Measures Act, as amended, or the President's successor; or

(ii) the Canadian International Trade Tribunal, or its successor;

(b) in the case of Mexico, the designated authority within the Secretariat of Economy (Secretaria de Economia), or its successor; and

(c) in the case of the United States:

(i) the International Trade Administration of the United States Department of Commerce, or its successor, of

(ii) the United States International Trade Commission, or its successor;

countervailing duty statute means:

(a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;

(b) in the case of Mexico, the relevant provisions of the Foreign Trade Act (Ley de Comercio Exterior), as amended, and any successor statutes;

(c) in the case of the United States, section 303 and the relevant provisions of Title VII of the Tariff Act of 1930, as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b), or (c), or indicates the standard of review to be applied to such determinations;

domestic law for purposes of Article 10.13.1 (Safeguarding the Panel Review System) means a Party's constitution, statutes, regulations and judicial decisions to the extent they are relevant to the antidumping and countervailing duty laws;

final determination means:

(a) in the case of Canada:

(i) an order or finding of the Canadian International Trade Tribunal under subsection 43(1) of the Special Import Measures Act,

(ii) an order by the Canadian International Trade Tribunal under subsection 76(4) of the Special Import Measures Act, as

amended, continuing an order or finding made under subsection 43(1) of the Act with or without amendment,

(iii) a determination by the President of the Canada Border Services Agency pursuant to section 41 of the Special Import Measures Act, as amended,

(iv) a redetermination by the President pursuant to section 59 of the Special Import Measures Act, as amended,

(v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the Special Import Measures Act, as amended, not to initiate a review,

(vi) a reconsideration by the Canadian International Trade Tribunal pursuant to subsection 91(3) of the Special Import Measures Act, as amended, and

(vii) a review by the President of an undertaking pursuant to subsection 53(1) of the Special Import Measures Act, as amended; and

(b) in the case of Mexico:

(i) a final resolution regarding antidumping or countervailing duties investigations by the Secretariat of Economy (Secretaria de Economia), pursuant to Article 59 of the Foreign Trade Act (Ley de Comercio Exterior), as amended,

(ii) final resolution regarding an annual administrative review of antidumping or countervailing duties by the Secretariat of Economy (Secretaria de Economia), as described in subparagraph (0) of its Schedule to Annex 10- B.5 (Amendments to Domestic Laws), and

(iii) a final resolution by the Secretariat of Economy (Secretaria de Economia), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping or countervailing duty resolution; and

(c) in the case of the United States:

(i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the Tariff Act of 1930, as amended, including any negative part of such a determination,

(ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the Tariff Act of 1930, as amended, including any affirmative part of such a determination,

(ii) a final determination, other than a determination in (iv), under section 751 of the Tariff Act of 1930, as amended,

(iv) adetermination by the United States International Trade Commission under section 751(b) of the Tariff Act of 1930, as amended, not to review a determination based on changed circumstances, and (v) a final determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order; foreign interests includes exporters or producers of the Party whose goods are the subject of the proceeding or, in the case of a countervailing duty proceeding, the government of the Party whose goods are the subject of the proceeding;

general legal principles includes principles such as standing, due process, rules of statutory construction, mootness and exhaustion of administrative remedies;

goods of a Party means domestic products as these are understood in the GATT 1994; importing Party means the Party that issued the final determination;

interested parties includes foreign interests;

involved Party means:

(a) the importing Party; or

(b) a Party whose goods are the subject of the final determination;

remand means a referral back for a determination not inconsistent with the panel or committee decision; and

standard of review means the following standards, as may be amended from time to time by the relevant Party:

(a) in the case of Canada, the grounds set out in subsection 18.1(4) of the Federal Court Act, as amended, with respect to all

final determinations;

(b) in the case of Mexico, the standard set out in Article 51 of the Federal Act of Administrative Litigation Procedure (Ley Federal de Procedimiento Contencioso Administrativo), ot any successor statutes, based solely on the administrative tecord; and

(c) in the case of the United States;

(i) the standard set out in section 516A(b)d)(B) of the Tariff Act of 1930, as amended, with the exception of a determination referred to in (ii); and

(ii) the standard set out in section 516A(b)()(A) of the Tariff Act of 1930, as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the Tariff Act of 1930, as amended.

Article 10.9. General Provisions

1. Article 10.12 (Review of Final Antidumping Law and Countervailing Duty Law) applies only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.

2. For purposes of Article 10.11 (Review of Statutory Amendments) and Article 10.12 (Review of Final Antidumping Law and Countervailing Duty Law), panels shall be established in accordance with the provisions of Annex 10-B.1 (Establishment of Binational Panels).

3. Except for Article 34.5 (Entry into Force), no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

Article 10.10. Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice, and judicial precedents.

2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:

(a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to goods from that Party or from the Parties to this Agreement;

(b) the amending Party notifies in writing the Parties to which the amendment applies of the amending statute as far in advance as possible of the date of enactment of such statute;

(c) following notification, the amending Party, on request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and

(d) such amendment, as applicable to that other Party, is not inconsistent with:

(i) GATT 1994, the AD Agreement or the SCM Agreement, or any successor agreement to which the Parties are party, or

(ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade between the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives, and the practices of the Parties.

Article 10.11. Review of Statutory Amendments

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

(a) the amendment does not conform to the provisions of Article 10.10(2)(d)(i) or (ii) (Retention of Domestic Antidumping Law and Countervailing Duty Law); or

(b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 10.12

(Review of Final Antidumping and Countervailing Duty Determinations) and does not conform to the provisions of Article 10.10(2)(d)G@) or (ii) (Retention of Domestic Antidumping Law and Countervailing Duty Law).

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 10-B.2 (Panel Procedures under Article 10.11).

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

(a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;

(b) if corrective legislation is not enacted within nine months from the end of the 90 day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may:

(i) take comparable legislative or equivalent executive action, or

(ii) terminate this Agreement with regard to the amending Party on 60 day written notice to that Party.

Article 10.12. Review of Final Antidumping and Countervailing Duty Determinations

1. As provided in this Article, each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. An involved Party may request that a panel review, based on the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice, and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into and made a part of this Section.

3. The panel shall apply the standard of review set out in Article 10.8 (Definitions) and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

4. A request for a panel shall be made in writing to the other involved Party within 30 days following the date of publication of the final determination in question in the official journal of the importing Party. In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.

5. An involved Party on its own initiative may request review of a final determination by a panel and shall, on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review.

6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both involved Parties request a panel to review a final determination, a single panel shall review that determination.

7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the

panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.

9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

(a) the judicial review procedures of any Party; or

(b) cases appealed under those procedures, with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set out in this Article. No Party may provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. This Article shall not apply where:

(a) neither involved Party seeks panel review of a final determination;

(b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or

(c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.

13. Where, within a reasonable time after the panel decision is issued, an involved Party alleges that:

(a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

(ii) the panel seriously departed from a fundamental rule of procedure, or

(ii) the panel manifestly exceeded its powers, authority or jurisdiction set out in this Article, for example by failing to apply the appropriate standard of review, and

(b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

that Party may avail itself of the extraordinary challenge procedure set out in Annex 10-B.3 (Extraordinary Challenge Procedure).

14. For purposes of this Article, the Parties shall adopt or maintain rules of procedure based, where appropriate, on judicial rules of appellate procedure, and shall include rules concerning: the content and service of requests for panels; a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding; the protection of business proprietary, government classified, and other privileged information (including sanctions against persons participating before panels for improper release of such information); participation by private persons; limitations on panel review to errors alleged by the Parties or private persons; filing and service; computation and extensions of time; the form and content of briefs and other papers; pre- and post-hearing conferences; motions; oral argument; requests for rehearing; and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:

(a) 30 days for the filing of the complaint;

(b) 30 days for designation or certification of the administrative record and its filing with the panel;

(c) 60 days for the complainant to file its brief;

(d) 60 days for the respondent to file its brief;

(e) 15 days for the filing of reply briefs;

(f) 15 to 30 days for the panel to convene and hear oral argument; and

(g) 90 days for the panel to issue its written decision.

15. In order to achieve the objectives of this Article, the Parties shall maintain or amend their antidumping and countervailing duty statutes and regulations with respect to antidumping or countervailing duty proceedings involving goods of the other Parties, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws. In particular, without limiting the generality of the foregoing, each Party shall:

(a) maintain or amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;

(b) maintain or amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;

(c) maintain or amend its statutes or regulations to ensure that:

(i) domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and

(ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and

(d) maintain the amendments set out in its Schedule to Annex 1904.15 of the NAFTA 1994, as reproduced in Annex 10-B.5 (Amendments to Domestic Laws), and make any conforming amendments necessary.

Article 10.13. Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law:

(a) has prevented the establishment of a panel requested by the complaining Party;

(b) has prevented a panel requested by the complaining Party from rendering a final decision;

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the competent investigating authority's determination and whether the competent investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 10.8 (Definitions);

the Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations, or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.

3. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request and perform its functions in a manner consistent with this Section.

4. The roster for special committees shall be that established under Annex 10-B.3 (Extraordinary Challenge Procedure).

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 10-B.3 (Extraordinary Challenge Procedure).

6. The Parties shall establish or maintain rules of procedure in accordance with the principles set out in Annex 10-B.4 (Special Committee Procedures).

7. Where the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, the complaining Party and the Party complained against shall begin consultations within 10 days thereafter and shall seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.

8. If, within the 60 day period, the Parties are unable to reach a mutually satisfactory solution to the matter, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or problems with respect to which the committee has made an affirmative finding, the complaining Party may suspend:

(a) the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) with respect to the Party complained against; or

(b) the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

If the complaining Party decides to take action under this paragraph, it shall do so within 30 days after the end of the 60-day consultation period.

9. In the event that a complaining Party suspends the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) within 30 days after the suspension of the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) by the complaining Party. If either Party decides to suspend the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations), it shall provide written notice of such suspension to the other Party.

10. On the request of the Party complained against, the special committee shall reconvene to determine whether:

(a) the suspension of benefits by the complaining Party pursuant to paragraph 8(b) is manifestly excessive; or

(b) the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

The special committee shall, within 45 days of the request, present a report to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension effected by the complaining Party or the Party complained against, or both, pursuant to paragraph 8 or 9 shall be terminated.

11. If the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, then effective as of the day following the date of issuance of the special committee's report:

(a) binational panel or extraordinary challenge committee review under Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) shall be stayed

(i) in the case of review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1, and in no case more than 150 days prior to an affirmative finding by the special committee, or

(ii) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party; and

(b) the time set out in Article 10.12(4) (Review of Final Antidumping and Countervailing Duty Determinations) or Annex 10-B.3 (Extraordinary Challenge Procedure) for requesting panel or committee review shall not run unless and until resumed in accordance with paragraph 12.

12. If either Party suspends the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) pursuant to paragraph 8(a), the panel or committee review stayed under paragraph 11(a) shall be terminated and the challenge to the final determination shall be irrevocably referred to the appropriate domestic court for decision, as provided below:

(a) in the case of review of any final determination of the complaining Party requested by the Party complained against, at the request of either Party, or of a party to the panel review under Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations); or

(b) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party, or of a person of the complaining Party that is a party to the panel review under Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations).

13. If either Party suspends the operation of Article 10.12 (Review of Antidumping Law and Countervailing Duty Law) pursuant to paragraph 8(a), any running of time suspended under paragraph 11(b) shall resume.

14, If the suspension of the operation of Article 10.12 (Review of Antidumping Law and Countervailing Duty Law) does not become effective, panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

15. If the complaining Party suspends the application to the Party complained against of such benefits under the Agreement as may be appropriate under the circumstances pursuant to paragraph 8(b), panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

16. Each Party shall provide in its domestic legislation that, in the event of an affirmative finding by the special committee, the time for requesting judicial review of a final antidumping or countervailing duty determination shall not run unless and until the Parties concerned have negotiated a mutually satisfactory solution under paragraph 7, have suspended the operation of Article 10.12 (Review of Antidumping Law and Countervailing Duty Law) or the application of other benefits under paragraph 8.

Article 10.14. Prospective Application

This Section shall apply only prospectively to:

(a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and

(b) with respect to declaratory opinions under Article 10.11 (Review of Statutory Amendments), amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

Article 10.15. Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Section and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Section are carried out expeditiously.

2. The Parties further agree to consult on:

(a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and

(b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

3. The competent investigating authorities of the Parties shall consult annually, or on the request of any Party, and may submit reports to the Commission, where appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of antidumping and countervailing duty laws to:

(a) publish notice of initiation of investigations in the importing Party's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the goods at issue;

(b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;

(c) provide explicit written notice and instructions as to the information required from interested parties and reasonable time to respond to requests for information;

(d) accord reasonable access to information, noting that in this context

(i) "reasonable access" means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set out in paragraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review, and

(ii) "access to information" means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential

(business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic law of a Party; any privileges arising under the domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;

(e) provide an opportunity for interested parties to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;

(f) protect confidential (business proprietary) information received by the competent investigating authority to ensure that there is no disclosure except to representatives determined by the competent investigating authority to be qualified;

(g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of ex parte meetings that may be required to be kept;

(h) provide disclosure of relevant information, including an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of the subsidy, on which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties;

(i) provide a statement of reasons concerning the final determination of dumping or subsidization; and

(j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Inclusion of an item in subparagraphs (a) through (j) is not intended to serve as guidance to a binational panel reviewing a final antidumping or countervailing duty determination pursuant to Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) in determining whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party.

Article 10.16. Special Secretariat Provisions

1. Each Party shall maintain a Secretariat to facilitate the operation of this Section, including the work of panels or committees that may be convened pursuant to this Section.

2. The Secretaries of the Secretariat shall act jointly to provide administrative assistance to all panels or committees established pursuant to this Section. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in that Party's Section office. Such Secretary shall, on request, provide to the Secretary for the Section of another Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the Secretary for the Section of any Party that is not an involved Party.

3. Each Secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Section and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.

4. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall forward to the Secretary for the Section of the other involved Party copies of all official letters, documents or other papers received or filed with that Party's Section office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 2. The Secretary for the Section of an involved Party shall provide on request to the Secretary for the Section of a Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

Article 10.17. Code of Conduct

The Parties shall exchange letters establishing or maintaining a code of conduct for panelists and members of committees established pursuant to Article 10.11 (Review of Statutory Amendments), Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations), and Article 10.13 (Safeguarding the Panel Review System).

Article 10.18. Miscellaneous

On request of another Party, the competent investigating authority of a Party shall provide to the other Party copies of all

public information submitted to it for purposes of an antidumping or countervailing duty investigation with respect to goods of that other Party.

Chapter 11. TECHNICAL BARRIERS TO TRADE

Article 11.1. Definitions

1. Annex 1 of the TBT Agreement, including the chapeau and explanatory notes, is incorporated into and made part of this Chapter, mutatis mutandis.

2. For the purposes of this Chapter:

international conformity assessment systems means systems that facilitate voluntary recognition or acceptance of the results of conformity assessment or accreditation bodies by the authorities of another Party based on compliance with international standards for conformity assessment;

international standard means a standard that is consistent with the TBT Committee Decision on International Standards;

mutual recognition agreement means an intergovernmental agreement that specifies the conditions by which a Party will recognize the results of conformity assessment procedures produced by another Party's conformity assessment bodies that demonstrate fulfillment of appropriate standards or technical regulations; (1)

mutual recognition arrangement or multilateral recognition arrangement means an international or regional arrangement among accreditation bodies in the territories of the Parties, in which the accreditation bodies, on the basis of peer evaluation, accept the results of each other's accredited conformity assessment bodies or among conformity assessment bodies in the territories of the Parties recognizing the results of conformity assessment;

proposed technical regulation or conformity assessment procedure means the entirety of the text setting forth:

(a) a proposed technical regulation or conformity assessment procedure; or

(b) a significant amendment to an existing technical regulation or conformity assessment procedure;

TBT Agreement means the Agreement on Technical Barriers to Trade, set out in Annex 1A to the WTO Agreement; and

TBT Committee Decision on International Standards means Annex 2 to Part 1 (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement) in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev. 13), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

(1) For greater certainty, mutual recognition agreements include agreements to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998 and the Electrical and Electronic Equipment Mutual Recognition Arrangement of July 7, 1999.

Article 11.2. Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures, including any amendments, of central level of government bodies, which may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) technical specifications prepared by a governmental body for production or consumption requirements of a governmental body; or

(b) sanitary or phytosanitary measures.

Article 11.3. Incorporation of the TBT Agreement

1. The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, mutatis mutandis:

(a) Articles 2.1, 2.2, 2.3, 2.4, 2.5, 2.9, 2.10, 2.11, and 2.12;

(b) Articles 3.1, 4.1, and 7.1;

(c) Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, and 5.9; and

(d) Paragraphs D, E, F, and J of Annex 3.

2. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter if the dispute concerns:

(a) exclusively claims made under the provisions of the TBT Agreement incorporated under paragraph 1; or

(b) a measure that a Party alleges to be inconsistent with this Chapter that:

(i) was referred or is subsequently referred to a WTO dispute settlement panel,

(ii) was taken to comply in response to the recommendations or rulings from the WTO Dispute Settlement Body, or

(ii) bears a close nexus, such as in terms of nature, effects, and timing, with respect to a measure described in subparagraph (ii).

Article 11.4. International Standards, Guides and Recommendations

1. The Parties recognize the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment and good regulatory practices, and in reducing unnecessary barriers to trade.

2. To determine whether there is an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall apply the TBT Committee Decision on International Standards.

3. Each Party shall apply no additional principles or criteria other than those in the TBT Committee Decision on International Standards in order to recognize a standard as an international standard. For greater certainty, criteria that are not relevant to determining whether a standard is an international standard include:

(a) the domicile of the standards body;

(b) whether the standards body is non-governmental or inter-governmental; and

(c) whether the standards body limits participation to delegations.

4. The Parties shall cooperate with each other in appropriate circumstances to ensure that international standards, guides, and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

5. No Party shall accord any preference to the consideration or use of standards that are developed through processes that:

(a) are inconsistent with the TBT Committee Decision on International Standards; or

(b) treat persons of any of the Parties less favorably than persons whose domicile is the same as the standardization body.

6. With respect to any agreement or understanding establishing a customs union or free-trade area or providing trade-related technical assistance, each Party shall encourage the adoption, and use as the basis for standards, technical regulations, and conformity assessment procedures, of any relevant standards, guides, or recommendations developed in accordance with the TBT Committee Decision on International Standards.

7. Recognizing the importance of maintaining North American commercial integration and maintaining market access for producers in North America, each Party shall ensure that any obligation or understanding it has with a non-Party does not facilitate or require the withdrawal or limitation on the use or acceptance of any relevant standard, guide, or recommendation developed in accordance with the TBT Committee Decision on International Standards or the relevant provisions of this Chapter.

Article 11.5. Technical Regulations Preparation and Review of Technical Regulations

1. Each Party shall conduct an appropriate assessment concerning any major technical regulations it proposes to adopt. An assessment can include:

(a) a regulatory impact analysis of the technical regulation's potential impacts; or

(b) an analysis that requires evaluation of alternative measures, if any, including voluntary actions that are brought to the Party's attention in a timely manner.

Each Party shall maintain discretion in deciding if a proposed technical regulation is major under this paragraph.

2. Each Party shall:

(a) periodically review technical regulations and conformity assessment procedures in order to:

(i) examine increasing alignment with relevant international standards, including by reviewing any new developments in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist, and

(ii) consider the existence of any less trade-restrictive approaches; or

(b) maintain a process whereby a person of another Party may directly petition the Party's regulatory authorities to review a technical regulation or conformity assessment procedure on the grounds that:

(i) circumstances that were relevant to the content of the technical regulation have changed, or

(ii) a less trade-restrictive method to fulfil the technical regulation's objective exists, such as a technical regulation based on the international standard.

Use of Standards in Technical Regulations

3. If there are multiple international standards that would be effective and appropriate to fulfil the Party's legitimate objectives of a technical regulation or conformity assessment procedure, the Party shall:

(a) consider using as a basis for the technical regulation or conformity assessment procedure each of the international standards that fulfill the legitimate objectives of the technical regulation or conformity assessment procedure; and

(b) if the Party has rejected an international standard that was brought to its attention, issue a written explanation wherever practicable.

The written explanation provided for in subparagraph (b) must include the reasons for the Party's decision to reject an international standard and shall be provided directly to the person that proposed a particular international standard or in a document that is published at the same time that the Party publishes the final technical regulation or conformity assessment procedure.

4. If no international standard is available that fulfils the legitimate objectives of the technical regulation or conformity assessment procedure, each Party shall consider whether a standard developed by a standardizing body domiciled in any of the Parties can fulfill its legitimate objectives. To that end, each Party shall:

(a) consider and decide whether to accept the standard developed by a standardizing body domiciled in any of the Parties fulfils its legitimate objectives; and

(b) if the Party has rejected a standard that was brought to its attention, issue a written explanation wherever practicable.

The written explanation provided for in subparagraph (b) must include the reasons for the Partyâs decision to reject an international standard and shall be provided directly to the person that proposed a particular standard or in a document that is published at the same time the Party publishes the final technical regulation or conformity assessment procedure.

5. In order for a Party to consider accepting or using a standard as provided for in paragraphs 4 and 5, the Parties recognize that a standard must be brought to the attention of a Party, in a language the Party utilizes for the publication of technical regulations and conformity assessment procedures. This must be done during the Party's planning stage or when the proposed technical regulation or conformity assessment procedure is published for comment as provided for in Article 11.7 (Transparency).

Information Exchange

6. Ifa Party has not used an international standard as a basis for a technical regulation, a Party shall, on request from another Party, explain why it has not used a relevant international standard or has substantially deviated from an international standard. The explanation shall address why the standard has been judged inappropriate or ineffective for the objective pursued, and identify the scientific or technical evidence on which this assessment is based. To facilitate an appropriate explanation, the requesting Party shall in its request:

(a) identify a relevant international standard that the technical regulation has purportedly not used as its basis; and

(b) describe how the technical regulation is constraining or has the potential to constraint its exports.

The requesting Party shall also endeavour to indicate whether the international standard was brought to the responding Party's attention when it was developing the technical regulation.

7. In addition to Article 2.7 of the TBT Agreement, a Party shall, on request of another Party, (2) provide the reasons why it has not or cannot accept a technical regulation of that Party as equivalent to its own. The Party to which the request is made should provide its response within a reasonable period of time.

Labeling

8. In order to avoid disrupting North American trade, and consistent with the obligations contained in Article 11.3 (Incorporation of the TBT Agreement), each Party shall ensure that its technical regulations concerning labels:

(a) accord treatment no less favorable than that accorded to like goods of national origin; and

(b) do not create unnecessary obstacles to trade between the Parties.

(2) The Party's request should identify with precision the respective technical regulations it considers to be equivalent and any data or evidence that supports its position.

Article 11.6. Conformity Assessment

National Treatment

1. In addition to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of another Party treatment no less favorable than that it accords to conformity assessment bodies located in its own territory or in the territory of the other Party. Treatment under this paragraph includes procedures, criteria, fees, and other conditions relating to accrediting, approving, licensing, or otherwise recognizing conformity assessment bodies.

2. In addition to Article 6.4 of the TBT Agreement, if a Party maintains procedures, criteria or other conditions as set out in paragraph 1 and requires conformity assessment results, including test results, certifications, technical reports or inspections as positive assurance that a product conforms to a technical regulation or standard, it shall:

(a) not require the conformity assessment body to be located within its territory;

(b) not effectively require the conformity assessment body to operate an office within its territory; and

(c) permit conformity assessment bodies in other Parties' territories to apply to the Party, or any body that it has recognized or approved for this purpose, for a determination that they comply with any procedures, criteria and other conditions the Party requires to deem them competent or to otherwise approve them to test or certify the product or conduct an inspection.

Explanations and Information

3. If a Party undertakes conformity assessment procedures in relation to specific products by specified government bodies located in its own territory or in another Party's territory, the Party shall, on the request of another Party or if practicable, an applicant of another Party, explain:

(a) how the information it requires is necessary to assess conformity;

(b) the sequence in which a conformity assessment procedure is undertaken and completed;

(c) how the Party ensures that confidential business information is protected; and

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

4. Each Party shall explain, on the request of another Party, the reasons for its decision, whenever it declines to:

(a) accredit, approve, license, or otherwise recognize a conformity assessment body;

(b) recognize the results from a conformity assessment body that is a signatory to a mutual recognition arrangement;

(c) accept the results of a conformity assessment procedure conducted in the territory of another Party; or

(d) continue negotiations for a mutual recognition agreement.

Subcontracting

5. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation or standard, it shall not prohibit a conformity assessment body from using subcontractors, or refuse to accept the results of conformity assessment on account of the conformity assessment body using subcontractors, to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of another Party, (3) provided that the subcontractors are accredited and approved in the Party's territory, when required.

Accreditation

6. In addition to Article 9.2 of the TBT Agreement, no Party shall refuse to accept, or take actions that have the effect of, directly or indirectly, requiring or encouraging the refusal of acceptance of conformity assessment results performed by a conformity assessment body located in the territory of another Party because the accreditation body that accredited the conformity assessment body:

(a) operates in the territory of a Party where there is more than one accreditation body;

(b) is a non-governmental body;

(c) is domiciled in the territory of a Party that does not maintain a procedure for recognizing accreditation bodies, provided that the accreditation body is recognized internationally, consistent with paragraph 7;

(d) does not operate an office in the Party's territory; or

(e) is a for-profit entity.

7. In addition to Article 9.1 of the TBT Agreement, each Party shall:

(a) adopt or maintain measures to facilitate and encourage its authorities to rely on mutual or multilateral recognition arrangements to accredit, approve, license or otherwise recognize conformity assessment bodies where effective and appropriate to fulfill the Party's legitimate objectives; and

(b) consider approving or recognizing accredited conformity assessment bodies for its technical regulations or standards, by an accreditation body that is a signatory to a mutual or multilateral recognition arrangement, for example, the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

The Parties recognize that the arrangements referenced in subparagraph (b) can address considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

Choice of Conformity Assessment

8. The Parties recognize that the choice of conformity assessment procedures in relation to a specific product covered by a technical regulation or standard should include an evaluation of the tisks involved, the need to adopt procedures to address those risks, relevant scientific and technical information, incidence of non-compliant products, and possible alternative approaches for establishing that the technical regulation or standard has been met.

Fees

9. Nothing in this Article precludes a Party from requesting that conformity assessment procedures in relation to specific products are performed by specified government authorities of the Party. In those cases, the Party conducting the conformity assessment procedures shall:

(a) limit any fees it imposes for conformity assessment procedures on products from the other Parties to the costs of services rendered;

(b) not impose fees on an applicant of another Party to deliver conformity assessment services, except to recover costs incurred from services rendered;

(c) make the amounts of any fees for conformity assessment procedures publicly available;

(d) not apply a new or modified fee for conformity assessment procedures until the fee and the method for assessing the fee are published and, if practicable, the Party has provided an opportunity for interested persons to comment on the

proposed introduction or modification of a conformity assessment fee.

10. On request of a Party, or an applicant's request if practicable, a Party shall explain how:

(a) any fees it imposes for such conformity assessment are no higher than the cost of services rendered;

(b) fees for its conformity assessment procedures are calculated; and (c) any information it requires is necessary to calculate fees. Exceptions

11. For greater certainty, nothing in paragraphs 1 or 2 precludes a Party from taking actions to verify the results from a conformity assessment procedure, including requesting information from the conformity assessment or accreditation body. These actions shall not subject a product to duplicative conformity assessment procedures, except when necessary to address non-compliance. The verifying Party may share information it has requested with another Party, provided it protects confidential information.

12. Paragraphs 2(b) and 5 do not apply to any requirement a Party may have concerning the use of products, conformity assessment procedures or related services in the commercial maritime or civil aviation sectors.

(3) For greater certainty, this paragraph does not prohibit a Party from taking steps to ensure the performance of the subcontractor meets its requirements.

Article 11.7. Transparency

1. Each Party shall allow persons of another Party to participate in the development of technical regulations, standards and conformity assessment procedures (4) by its central government bodies on terms no less favorable than those that it accords to its own persons.

2. Further to Articles 2.9 and 5.6 of the TBT Agreement, if a Party prepares or proposes to adopt a technical regulation or conformity assessment procedure that is notin response to an urgent situation as referred to in Article 2.10 and Article 5.7 of the TBT Agreement, the Party shall:

(a) publish the proposed technical regulation or conformity assessment procedure;

(b) allow persons of another Party to submit written comments during a public consultation period on no less favorable terms than it provides to its own persons;

(c) publish and allow for written comment in accordance with subparagraphs (a) and (b) at a time when the authority proposing the measure has sufficient time to review those comments and, as appropriate, to revise the measure to take them into account;

(d) consider the written comments from a person of another Party on no less favorable terms than it considers those submitted by its own persons; and

(e) if practicable, (5) accept a written request from another Party to discuss written comments that the other Party has submitted.

The Party requested under subparagraph (e) to discuss its proposed technical regulation or conformity assessment procedure shall ensure that it has appropriate personnel to participate in the discussions, such as from the competent authority that has proposed the technical regulation or conformity assessment procedure, in order to confirm that the written comments are fully taken into account.

(4) A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and by taking those comments into account in the development of the measure.

3. Each Party shall endeavor to promptly make publicly available any written comments it receives under paragraph 2(c), except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content. If it is impracticable to post these comments on a single website, the regulatory authority of a Party shall endeavor to make these comments available via its own website.

4. Each Party shall publish the final technical regulation or conformity assessment procedure and an explanation of how it has addressed substantive issues raised in comments submitted in a timely manner.

5. If appropriate, each Party shall encourage non-governmental bodies including standardization bodies in its territory to act consistently with the obligations in paragraphs 1 and 7, in developing standards and voluntary conformity assessment procedures.

6. Each Party shall ensure that its central government standardizing bodyâs work program, containing the standards it is currently preparing and the standards it has adopted, is published:

(a) on the central government standardizing body's website;

(b) in its official gazette; or

(c) on the website referred to in paragraph 10.

Stakeholder Participation in Developing Technical Regulations and Mandatory Conformity Assessment Procedures

7. Each Party shall encourage consideration of methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including the use of electronic tools and public outreach or consultations.

8. If a Party requests a body within its territory to develop a standard for use as a technical regulation or conformity assessment procedure, the Party shall require the body to allow persons of another Party to participate on no less favorable terms than its own persons in groups or committees of the body that is developing the standard, and apply Annex 3 of the TBT Agreement.

9. Each Party shall take such reasonable measures as may be available to it to ensure proposed and final technical regulations and conformity assessment procedures of regional governments are published. (6)

10. Each Party shall publish online and make freely accessible, preferably on a single website, all proposed and final technical regulations and mandatory conformity assessment procedures, except with respect to any standards that are:

(a) developed by non-governmental organizations; and

(b) have been incorporated by reference into a technical regulation or conformity assessment procedure.

Notification of Technical Regulations and Conformity Assessment

11. In accordance with the procedures established under Article 2.9 or Article 5.6 of the TBT Agreement, each Party shall notify proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations if they may have a significant effect on trade. The Party's notification shall identify the precise international standards, guides or recommendations with which the proposal is in accordance.

12. In accordance with the procedures under Article 2.10 or Article 5.7 of the TBT Agreement, and notwithstanding paragraph 11, if urgent problems of safety, health, environmental protection, or national security arise or threaten to arise for a Party, that Party shall notify a technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations. In its notification, the Party shall identify the precise international standards, guides, or recommendations with which the proposal is in accordance.

13. In accordance with the procedures established under Article 2.9 or Article 5.6 of the TBT Agreement, each Party shall endeavor to notify, proposed technical regulations and conformity assessment procedures of regional level of governments that may have a significant effect on trade and that are in accordance with the technical content of relevant international standards, guides, and recommendations.

14. With respect to notifications made under Articles 2.9 and 5.6 of the TBT Agreement and paragraph 11 of this Chapter, each Party shall notify proposed technical regulations and conformity assessment procedures at an early appropriate stage by:

(a) ensuring the notification is made at a time when the authority developing the measure can introduce amendments, including in response to any comments submitted as set out in subparagraph (d);

(b) including with its notification:

(i) any objective for the proposed technical regulation or conformity assessment procedure and its legal basis,

(ii) an explanation of how the proposed technical regulation or conformity assessment procedure would fulfill the identified objectives, and

(iii) a copy of the proposed technical regulation or conformity assessment procedure or an online address at which the proposed measure can be accessed;

(c) transmitting the notification electronically to the other Parties through their enquiry points established in accordance with Article 10 of the TBT Agreement, contemporaneously with the submission of the notification to the WTO Secretariat; and

(d) providing sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure to ensure that the responsible authority can fully consider the submitted comments and the Party can issue its responses to the comments.

Each Party shall normally allow 60 days from the date it transmits a proposal under subparagraph (b) for another Party or an interested person of a Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from another Party or an interested person of a Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, shall consider doing so.

15. Each Party, when making a notification under Article 2.10 or Article 5.7 of the TBT Agreement, shall at the same time transmit electronically the notification and text of the technical regulation or conformity assessment procedure, or an online address where the text of the measure can be viewed, to the Parties' contact points referred to in Article 11.12 (Contact Points).

16. If a Party is notifying a proposed technical regulation or conformity assessment procedure to the WTO TBT Committee and the other Parties for the first time, (7) the Party shall notify it to the WTO TBT Committee and the other Parties as a regular notification. (8) Each Party shall endeavor to identify the scope of its proposed technical regulation or conformity assessment procedure in its notification by reference to the specific Harmonized System heading, subheading, or tariff item for the products that would be affected by the proposal.

17. If a Party is notifying a proposed technical regulation or conformity assessment procedure that is related to a measure that was previously notified, including because it is an revision, amendment, or replacement to the previously notified measure, the Party shall provide the WTO notification symbol for the previously notified measure. (9) Each Party shall endeavor to submit a revision to a notification if the notified measure has been substantially redrafted prior to its entry into force. If the Party files a revision or the circumstances in paragraph 18(e) arise, the Party shall endeavor to allow either a new or extended period of time for interested persons to submit comments to the Party.

18. Each Party shall submit an addendum to a notification it has previously made to the WTO TBT Committee and the Parties in any of the following circumstances:

(a) the period of time to submit comments on the proposed measure has changed;

(b) the notified measure has been adopted or otherwise entered into force;

(c) the compliance dates for the final measure have changed;

(d) the notified measure has been withdrawn, revoked, or replaced; (10)

(e) the content or scope of the notified measure is partially changed or amended;

(f) any interpretive guidance for a notified measure that has been issued; or

(g) the final text of the notified measure is published or adopted or otherwise enters into force.

19. Each Party shall endeavor to submit a corrigendum to a notification if it subsequently determines there are minor administrative or clerical errors in:

(a) a notification or subsequent related addendum or revision; or (b) the text of the notified measure.

20. If a Party obtains a translation of a measure notified to the WTO TBT Committee, whether official or unofficial, in an official WTO language other than the language of the notification, it shall endeavor to send the translation to the Parties' contact points referred to in Article 11.12 (Contact Points).

21. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and is subject to notification in accordance with Articles 2.9, 2.10, 3.2, 5.6, 5.7, or 7.2 of the TBT Agreement and this Chapter, a Party shall consider, among other things, the relevant guidance in the Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.13),

as may be revised.

22. When a Party has adopted a technical regulation or conformity assessment procedure that may have a significant effect on trade, the Party shall promptly publish online:

(a) an explanation of how the technical regulation or conformity assessment procedure achieves the Party's objectives;

(b) a description of alternative approaches, if any, that the Party considered in developing the adopted technical regulation or conformity assessment procedure and the explanation of why it chose one approach over the others it considered;

(c) its views on any substantive issues raised in timely submitted comments on the y y proposed technical regulation or conformity assessment procedure;

(d) any impact assessment it has undertaken;

(e) if not addressed by an impact assessment, an explanation of the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in finalizing its work on the regulation; and

(f) the date by which compliance is required.

(5) Circumstances when discussions are not practicable include where the Party requesting discussions has failed to submit its comments in a timely manner or if discussions would need to take place after the deadline to submit written comments has passed.

(6) For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the official website of the WTO.

(7) The Parties shall follow the recommendation set forth in G/TBT/35, Coherent Use of Notification Formats.

(8) A notification is a document that is circulated by the WTO Secretariat, or submitted to the WTO Secretariat for the purposes of circulation, under the prefix "G/TBT/N."

(9) The Parties agree the appropriate place to make the identification is in field 8 of a document produced consistent with the Format and Guidelines for Notification Procedures for Draft Technical Regulations and Conformity Assessment Procedures.

(10) The Party shall provide the WTO document number identifying the notification of a measure that replaces or has been proposed as a replacement for a withdrawn or revoked measure.

Article 11.8. Compliance Period for Technical Regulations and Conformity Assessment Procedures

1. For the purposes of Articles 2.12 and 5.9 of the TBT Agreement, the term "reasonable interval" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or the conformity assessment procedure. (11)

2. If feasible and appropriate, each Party shall endeavor to provide an interval of more than six months between the publication of a final technical regulation or conformity assessment procedure and its entry into force.

3. In addition to paragraphs 1 and 2, in setting a "reasonable interval" for a specific technical regulation or conformity assessment procedure, each Party shall provide suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their products with the relevant requirements of the technical regulation by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavor to take into account the resources available to suppliers.

(11) For greater certainty, a Party may decide to set an interval of less than six months between the publication of a measure and its entry into force in certain circumstances, including those where the measure is trade facilitative or is addressing an urgent problem of safety, health,

environmental protection, or national security.

Article 11.9. Cooperation and Trade Facilitation

1. In addition to Articles 5, 6, and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms (12) exists to facilitate the acceptance of conformity assessment results. In this regard, a Party shall give consideration to a request made by another Party with respect to any sector-specific proposal for cooperation including by, as appropriate:

(a) implementing mutual recognition of the results by conformity assessment bodies located in its territory and another Party's territory with respect to specific technical regulations;

(b) recognizing existing mutual and multilateral recognition arrangements between or among accreditation bodies or conformity assessment bodies;

(c) using accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

(d) designating conformity assessment bodies or recognise the other Party's designation of conformity assessment bodies;

(e) unilaterally recognizing the results of conformity assessment procedures performed in the other Party's territory; and

(f) accepting a supplier's declaration of conformity.

2. The Parties recognize that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region, including:

(a) regulatory dialogue and cooperation to, among other things:

(i) exchange of information on regulatory approaches and practices,

(ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures,

(iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology, or

(iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;

(b) facilitation of the greater use and alignment of standards, technical regulations, and conformity assessment procedures with relevant international standards, guides, and recommendations; and

(c) promotion of the acceptance of technical regulations of the other Party as equivalent.

3. In addition to subparagraph (c), the Parties shall work to develop common standards and conformity assessment procedures in sectors of mutual interest. The Parties shall determine the scope of this work through the Committee on Technical Barriers to Trade established under Article 11.11 (Committee on Technical Barriers to Trade).

4. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region. To this end, the Parties shall seek to identify, develop, and promote trade-facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that address particular cross-cutting or sector-specific issues.

5. The Parties shall encourage cooperation between their respective organizations responsible for standardization, conformity assessment, accreditation and metrology, whether they are public or private, with a view to facilitate trade.

(12) With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognize that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

Article 11.10. Information Exchange and Technical Discussions

1. The Parties recognize that technical discussions and information exchange can serve an important function in reaching

mutually satisfactory solutions to trade concerns by promoting cooperation and consultation informed by relevant technical and scientific information. Accordingly, with respect to a matter that arises under this Chapter, a Party may request that another Party:

(a) engage in technical discussions concerning the matter; or

(b) provide information regarding any proposed or final technical regulation or conformity assessment procedure that relates to the matter.

2. The Party making the request shall do so in writing and identify: (a) the matter, including those provisions of the Chapter to which the matter relates;

(b) the reasons for the request, including any concerns with a proposed or final measure;

(c) whether the matter is urgent; and (d) if applicable, the precise information that is being requested.

The Party making the request shall transmit it to the Parties through their respective contact points designated pursuant to Article 30.5 (Agreement Coordinator and Contact Points).

3. With respect to a request made under paragraph 1 (a), the requesting Party and the requested Party shall discuss the matter identified within 60 days after the date the request was transmitted to the contact point, unless the request identified the matter as urgent, in which case the Parties shall endeavor to hold the technical discussions sooner. The requested Party, at its discretion, may decide to allow another Party to participate in the technical discussions. With respect to a request made under paragraph 1(b), the Party receiving the request shall provide appropriate information within a reasonable period of time. The Parties shall attempt to obtain satisfactory resolution of the matter.

4. Unless the Parties decide otherwise, any discussions or information exchanged under this Article, other than the request referenced in paragraphs 1 and 2, shall be kept confidential and is without prejudice to the Parties' rights and obligations under the Agreement, the WTO Agreement or any other agreement to which the requesting and requested Parties are party.

Article 11.11. Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (TBT Committee), composed of government representatives of each Party.

2. Through the TBT Committee, the Parties shall strengthen their joint work in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating trade between the Parties.

3. The TBT Committee's functions include:

(a) monitoring and identifying ways to strengthen the implementation and operation of this Chapter, and identifying any potential amendments to or interpretations of this Chapter for referral to the Commission;

(b) as appropriate, discussing proposed and final versions of standards, technical regulations, or conformity assessment procedures of any Party;

(c) monitoring any technical discussions on matters that arise under this Chapter requested pursuant to paragraph 2 of Article 11.10 (Information Exchange and Technical Discussions);

(d) reaching an agreement on priority areas of mutual interest for future work under this Chapter and considering proposals for new sector-specific initiatives or other initiatives;

(e) encouraging cooperation between the Parties in matters that pertain to this Chapter, including the development, review, or modification of technical regulations, standard, and conformity assessment procedures;

(f) encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters that pertains to this Chapter;

(g) facilitating the identification of technical capacity needs;

(h) encouraging the exchange of information between the Parties and their relevant non-governmental bodies, if appropriate, to develop common approaches regarding matters under discussion in non-governmental, regional, plurilateral, and multilateral bodies or international conformity assessment systems or standards development relevant to this Chapter; including the WTO TBT Committee and bodies that develop standards in accordance with the TBT Committee

Decision on International Standards, as appropriate;

(i) encouraging, on request of a Party, the exchange of information between the Parties regarding specific technical regulations, standards, and conformity assessment procedures of non-Parties as well as systemic issues, with a view to fostering a common approach;

(j) undertaking initiatives to support greater regulatory alignment in the region, including through the development of common standards or conformity assessment procedures, in sectors of mutual interest;

(k) reporting to the Commission on the implementation and operation of this Chapter;

(l) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;

(m) engaging, as appropriate, with the public to participate in the work of the TBT Committee, for example by requesting and considering comments on matters related to the implementation of this Chapter; and

(n) taking any other steps that the Parties consider will assist them in implementing this Chapter.

4. Unless the Parties decide otherwise, the TBT Committee shall meet at least once a year.

5. The TBT Committee may establish and determine the scope and mandate of working groups to carry out its functions, and may invite, as appropriate, representatives of non- governmental entities to participate in a working group.

6. To determine what activities the TBT Committee will undertake, the TBT Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the TBT Committee do not unnecessarily duplicate that work.

Article 11.12. Contact Points

1. Each Party shall designate a contact point and notify it to the other Parties for matters arising under this Chapter in accordance with Article 30.5 (Agreement Coordinator and Contact Points). A Party shall promptly notify the other Parties of any change of its contact point or the details of the relevant officials.

2. The functions of each contact point shall include:

(a) communicating with the other Parties' contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in the territory of the Party it represents on relevant matters pertaining to this Chapter;

(c) consulting and, if appropriate, coordinating with interested persons in the territory of the Party it represents on relevant matters pertaining to this Chapter; and

(d) carrying out any additional responsibilities specified by the TBT Committee.

Chapter 12. SECTORAL ANNEXES

Article 12.1. Sectoral Annexes

1. In addition to other applicable provisions of this Agreement, this Chapter contains provisions with respect to chemical substances, cosmetic products, information and communication technology, energy performance standards, medical devices, and pharmaceuticals, as defined therein.

2. The rights and obligations set out in each annex to this Chapter shall apply only with respect to the sector specified in that annex, and shall not affect any Party's rights or obligations under any other annex to this Chapter.

ANNEX 12-C. INFORMATION AND COMMUNICATION TECHNOLOGY

Article 12.C.1. Definitions

For the purposes of this Annex:

cipher or cryptographic algorithm means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext;

cryptography means the principles, means or methods for the transformation of data in order to conceal or disguise its content, prevent its undetected modification, or prevent its unauthorized use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;

electromagnetic compatibility means the ability of a system or equipment to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances with respect to any other device or system in that environment;

electronic labeling means the electronic display of information, including required compliance information;

encryption means the conversion of data (plaintext) through the use of a cryptographic algorithm into a form that cannot be easily understood without subsequent re-conversion (ciphertext) and the appropriate cryptographic key;

information and communication technology good (ICT good) means a product whose intended function is information processing and communication by electronic means, including transmission and display, or electronic processing applied to determine or record physical phenomena, or to control physical processes;

information technology equipment product (ITE product) means a device, system, or component thereof for which the primary function is the entry, storage, display, retrieval, transmission, processing, switching, or control (or combinations thereof) of data or telecommunication messages by means other than radio transmission or reception;

key means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that an entity with knowledge of the key can reproduce or reverse the operation, while an entity without knowledge of the key cannot;

supplier's declaration of conformity means an attestation by a supplier that a product meets a specified standard or technical regulation based on an evaluation of the results of conformity assessment procedures; and

terminal equipment means a digital or analog device capable of processing, receiving, switching, signaling, or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Article 12.C.2. ICT Goods That Use Cryptography

1. This Article applies to ICT goods that use cryptography. (6) This Article does not apply to:

(a) a Party's law enforcement authorities requiring service suppliers using encryption they control to provide unencrypted communications pursuant to that Party's legal procedures;

(b) the regulation of financial instruments;

(c) a requirement that a Party adopts or maintains relating to access to networks, including user devices, that are owned or controlled by the government of that Party, including those of central banks;

(d) a measure taken by a Party pursuant to supervisory, investigatory, or examination authority relating to financial institutions or financial markets; or

(e) the manufacture, sale, distribution, import, or use of the good by or for the government of the Party.

2. With respect to an ICT good that uses cryptography and is designed for commercial applications, no Party shall require a manufacturer or supplier of the good, as a condition of the manufacture, sale, distribution, import, or use of the good, to:

(a) transfer or provide access to any proprietary information relating to cryptography, including by disclosing a particular technology or production process or other information, for example, a private key or other secret parameter, algorithm specification, or other design detail, to the Party or a person in the Party's territory;

(b) partner or otherwise cooperate with a person in its territory in the development, manufacture, sale, distribution, import, or use of the product; or

(c) use or integrate a particular cryptographic algorithm or cipher.

(6) For greater certainty, for the purposes of this Annex, an ICT good does not include a financial instrument.

Article 12.C.3. Electromagnetic Compatibility of ITE Products

1. This Article applies to requirements regarding the electromagnetic compatibility of ITE products.

2. This Article does not apply to a product:

(a) that a Party regulates as a medical device, a medical device system, or a component of a medical device or medical device system; or

(b) for which the Party demonstrates that there is a high risk that the product will cause harmful electromagnetic interference with a safety or radio transmission or reception device or system.

3. If a Party requires positive assurance that an ITE product meets a standard or technical regulation for electromagnetic compatibility, it shall accept a supplier's declaration of conformity, (7) provided that the declaration satisfies the Party's requirements regarding testing, such as testing by an accredited laboratory, in support of a supplier's declaration of conformity, registration of the supplier's declaration of conformity, or the submission of evidence necessary to support the supplier's declaration of conformity.

(7) For greater certainty, this paragraph does not apply to requirements a Party has adopted for certification by a conformity assessment body.

Article 12.C.4. Regional Cooperation Activities on Telecommunications Equipment

1. This Article applies to telecommunications equipment.

2. The Parties are encouraged to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998 (MRA-TEL) and, with respect to each other, the APEC Mutual Recognition Arrangement for Equivalence of Technical Requirements of October 31, 2010 (MRA-ETR), and to consider other arrangements to facilitate trade in telecommunications equipment.

3. In accordance with the Mutual Recognition Agreement between the Government of the United States and the Government of the United Mexican States for the Conformity Assessment of Telecommunications Equipment, done on May 26, 2011 at Paris, France the United States and Mexico shall accept test reports provided by a recognized testing laboratory designated by the other Party under terms and conditions no less favorable than those it accords to test reports produced by testing laboratories in its territory, and without regard to the nationality of the supplier or manufacturer of the telecommunications equipment, or the country of origin of the equipment for which a test report has been produced.

4. In accordance with the Mutual Recognition Agreement between the Government of Canada and the Government of the United Mexican States for the Conformity Assessment of Telecommunications Equipment, done at Honolulu on 12 November 2011, Canada and Mexico shall accept test reports provided by a recognized testing laboratory designated by the other Party under terms and conditions no less favorable than those it accords to test reports produced by testing laboratories in its territory, and without regard to the nationality of the supplier or manufacturer of the telecommunications equipment, or the country of origin of the equipment for which a test report has been produced.

5. If a Party requires equipment subject to electromagnetic compatibility and radio frequency requirements to include a label containing compliance information about the equipment, it shall permit this information to be provided through an electronic label. The Parties shall exchange information, as appropriate, about their respective electronic labeling requirements with a view to facilitate compatible approaches to electronic labeling.

Article 12.C.5. Terminal Equipment

1. This Article applies to terminal equipment.

2. Each Party shall ensure that its technical regulations, standards, and conformity assessment procedures relating to the attachment of terminal equipment to the public telecommunications networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent damage to public telecommunications networks;

(b) prevent degradation of public telecommunications services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction; or

(e) ensure safety of and access to public telecommunications or services, including for the hearing impaired or other disabled persons.

3. Each Party shall ensure that the network termination points for its public telecommunications networks are established on a reasonable and transparent basis.

4. Each Party shall permit any recognized (5) conformity assessment body to perform the testing required under the Party's conformity assessment procedures for terminal equipment to be attached to the public telecommunications network, subject to the Partyâs right to review the accuracy and completeness of the test results.

(5) "Recognized" means recognized pursuant to an act by a regulatory authority under which a conformity assessment body is approved to perform conformity assessment.

Chapter 13. GOVERNMENT PROCUREMENT

Article 13.1. Definitions

For the purposes of this Chapter:

build-operate-transfer contract and public works concession contract means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

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;

construction service means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

in writing or written means any worded or numbered expression that can be read, reproduced and may be later communicated, and may include electronically transmitted and stored information;

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

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;

offset means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade, or similar action to encourage local development or to improve a Party's balance of payments accounts;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

procuring entity means an entity listed in Annex 13-A;

qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;

selective tendering means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

services includes construction services, unless otherwise specified;

supplier means a person or group of persons that provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that: (a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production, or

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

(b) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

Article 13.2. Scope

Application of Chapter

1. This Chapter applies to any measure regarding covered procurement.

2. For the purposes of this Chapter, covered procurement means government procurement:

(a) of a good, service, or any combination thereof as specified in each Party's Schedule to Annex 13-A;

(b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts;

(c) for which the value, as estimated in accordance with paragraphs 9 and 10, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 13-A, at the time of publication of a notice of intended procurement;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

3. This Chapter applies only as between Mexico and the United Sates. Accordingly, for the purposes of this Chapter, "Party" or "Parties" means Mexico or the United States, singly or collectively.

Activities Not Covered

4. Unless otherwise provided in a Party's Schedule to Annex 13-A, 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, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives, and sponsorship arrangements;

(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; and 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 organization,

(e) or funded by international grants, loans, or other assistance if the applicable procedure or condition would be inconsistent with this Chapter.

Schedules

5. Each Party shall specify the following information in its Schedule to Annex 13-A:

(a) in Section A, the central government entities for which procurement is covered by this Chapter;

(b) in Section B, other entities for which procurement is covered by this Chapter;

(c) in Section C, the goods covered by this Chapter;

(d) in Section D, the services, other than construction services, covered by this Chapter; (e) in Section E, the construction services covered by this Chapter;

(f) in Section F, any General Notes;

(g) in Section G, the applicable Threshold Adjustment Formula; and

(h) in Section H, the publication information required under Article 13.5.2 (Publication of Procurement Information).

Compliance

6. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

7. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

8. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

Valuation

9. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:

(a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

(b) the value of any option clause; and

(c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

10. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

Article 13.3. Exceptions

1. Subject to the requirement that the measure is 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 between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

(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 the good or service of a person with disabilities, of philanthropic or not- for-profit institutions, or of prison labor.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 13.4. General Principles

National Treatment and 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, treatment no less favorable than the treatment

that the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

2. With respect to a measure regarding covered procurement, no Party, including its procuring entities, shall:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2 of this Article.

Procurement Methods

4. A procuring entity shall use an open tendering procedure for covered procurement unless Article 13.8 (Qualification of Suppliers) or Article 13.9 (Limited Tendering) applies.

Rules of Origin

5. For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

6. With regard to covered procurement, no Party, including its procuring entities, shall 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, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

Use of Electronic Means

8. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices, and tender documentation, and for the receipt of tenders.

9. 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; and

(b) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

Article 13.5. Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application relating to covered procurement, and any change or addition to this information.

2. Each Party shall list in Section I of its Schedule to Annex 13-A the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 13.6 (Notices of Intended Procurement), Article 13.8.3 (Qualification of Suppliers), and Article 13.15.3 (Transparency and Post-Award Information).

3. Each Party shall, on request, provide an explanation in response to an inquiry relating to the information referred to in paragraph 1.

Article 13.6. Notices of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 13.9 (Limited Tendering), a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means listed in Annex 13-

A. The notices shall remain readily accessible to the public until at least the expiration of the time period for responding to the notice or the deadline for submission of the tender.

2. The notices shall, if accessible by electronic means, be provided free of charge:

(a) for central government entities that are covered under Annex 13-A, through a single point of access; and

(b) for other entities covered under Annex 13-A, through links in a single electronic portal.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(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 the cost and terms of payment to obtain the relevant documents, if any;

(b) a description of the procurement, including, if appropriate, the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known;

(c) if applicable, the time-frame for delivery of goods or services or the duration of the contract;

applicable, the address and any final date for the submission of requests for (d) if applicable, the addr d final date for the submissi f fe participation in the procurement;

(e) the address and the final date for the submission of tenders;

(f) the language or languages in which tenders or requests for participation may be submitted, if other than an official language of the Party of the procuring entity;

(g) a list and a brief description of any conditions for participation of suppliers, that may include any related requirements for specific documents or certifications that suppliers must provide;

(h) if, pursuant to Article 13.8 (Qualification of Suppliers), 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, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(i) an indication that the procurement is covered by this Chapter.

4. For greater certainty, paragraph 3 does not preclude a Party from charging a fee for tender documentation if the notice of intended procurement includes all of the information set out in paragraph 3.

Notice of Planned Procurement

5. 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) which should include the subject matter of the procurement and the planned date of publication of the notice of intended procurement.

Article 13.7. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered procurement to those conditions that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that 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, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of that Party; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement.

3 In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) 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) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in the 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) professional misconduct or actions or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

5. For greater certainty, this Article is not intended to preclude a procuring entity from promoting compliance with laws in the territory in which the good is produced or the service is performed relating to labor rights as recognized by the Parties and set forth in Article 23.3 (Labor Rights), provided that such measures are applied in a manner consistent with Chapter 29 (Publication and Administration), and are not applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade between the Parties. (1)

(1) The adoption and maintenance of these measures by a Party should not be construed as evidence that the other Party has breached the obligations under Chapter 23 (Labor) with respect to labor.

Article 13.8. 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.

2. No Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement; or

(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

Selective Tendering

3. If a procuring entity intends to use selective tendering, the procuring entity shall:

(a) publish a notice of intended procurement that invites suppliers to submit a request for participation in a covered procurement; and

(b) include in the notice of intended procurement the information specified in Article 13.6.3(a), (b), (d), (g), (h), and (i) (Notices of Intended Procurement).

4. The procuring entity shall:

(a) publish the notice sufficiently in advance of the procurement to allow interested suppliers to request participation in the procurement;

(b) provide, by the commencement of the time period for tendering, at least the information in Article 13.6.3 (c), (e), and (f) (Notices of Intended Procurement) to the qualified suppliers that it notifies as specified in Article 13.13.3(b) (Time Periods); and

(c) allow all qualified suppliers to submit a tender, unless the procuring entity stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers.

5. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 3, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 4(c).

Multi-Use Lists

6. A Party, including its procuring entities, may establish or maintain a multi-use list provided that it publishes annually, or otherwise makes continuously available by electronic means, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of those conditions;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to 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 will be given of the termination of use of the list;

(e) the deadline for submission of applications for inclusion on the list, if applicable; and

(f) an indication that the list may be used for procurement covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 13.5.2 (Publication of Procurement Information).

7. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall include on the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 6.

8. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on the multi-use list and submits all required documents, within the time period provided for in Article 13.13.2 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement unless the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Information on Procuring Entity Decisions

9. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the decision with respect to the request or application.

10. âlfa procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognize 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 reason for its decision.

Article 13.9. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Article 13.6 (Notices of Intended Procurement), Article 13.7 (Conditions for Participation), Article 13.8 (Qualification of Suppliers), Article 13.10 (Negotiations), Article 13.11 (Technical Specifications), Article 13.12 (Tender Documentation), Article 13.13 (Time Periods), or Article 13.14 (Treatment of Tenders and Awarding of Contracts).

A procuring entity may use limited tendering only under the following circumstances:

(a) if, in response to a prior notice, invitation to participate, or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation,

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation,

(iii) no suppliers satisfied the conditions for participation, or (iv) the tenders submitted were collusive,

provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

(i) the requirement is for a work of art,

(ii) the protection of patents, copyrights, or other exclusive rights, or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier or its authorized agents, 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 technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement, or due to conditions under original supplier warranties, and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) for a good purchased on a commodity market or exchange;

(e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or 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 prototype or 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 prototype or the first 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;

(f) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, liquidation, bankruptcy, or receivership, but not for routine purchases from regular suppliers;

(g) if a contract is awarded to the winner of a design contest, provided that:

(i) the contest has been organized in a manner that is consistent with this Chapter, and

(ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or

(h) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

Article 13.10. Negotiations

1. A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 13.6 (Notices of Intended Procurement); or

(b) 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) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 13.11. Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognized national, standards or building codes.

3. A procuring entity shall not prescribe 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 these cases, the procuring entity includes words such as "or equivalent" in the tender documentation.

4. 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.

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

6. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or the protection of the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting, or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting, or processing of such information outside the territory of the Party.

Article 13.12. Tender Documentation

1. A procuring entity shall promptly make available or provide on request to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender. Unless already provided in the notice of intended procurement, that tender documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, if known, the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

(b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract and the relative importance of those criteria;

(d) if there will be a public opening of tenders, the date, time, and place for the opening;

(e) any other terms or conditions relevant to the evaluation of tenders; and

(f) any date for delivery of a good or supply of a service.

2. In establishing any date for the delivery of a good or the supply of a service 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. A procuring entity shall promptly reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

Modifications

4. If, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends, or re-issues a notice or

tender documentation, it shall publish or provide those modifications, or the amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment, or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit their initial tender, if appropriate.

Article 13.13. Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

(a) the nature and complexity of the procurement; and

(b) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Ifa state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less 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 the 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 set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement under Article 13.6 (Notices of Intended Procurement) at least 40 days and no 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) the address from which documents relating to the procurement may be obtained, and

(iv) as much of the information that is required for the notice of intended procurement as is available;

(b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or

(c) the procuring entity procures commercial goods or services.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

Article 13.14. 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. If the tender of a supplier is received after the time specified for receiving tenders, the procuring entity shall not penalize that supplier if the delay is due solely to the 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 notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

6. If a procuring entity received a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it 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 covered procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter.

Article 13.15. Transparency and Post-Award Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted a tender of the contract award decision. The procuring entity may do so in writing or through the prompt publication of the notice in paragraph 3, provided that the notice includes the date of award. Ifa supplier has requested the information in writing, the procuring entity shall provide it in writing.

2. Subject to Article 13.16 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select the unsuccessful supplier's tender or an explanation of the relative advantages of the successful supplier's tender.

Publication of Award Information

3. A procuring entity shall, promptly after the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:

(a) a description of the good or service procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the contract award;

(e) the date of award or, if the procuring entity has already informed suppliers of the date of the award under paragraph 1, the contract date; and

(f) the procurement method used and, if a procedure was used pursuant to Article 13.9 (Limited Tendering), a brief description of the circumstances justifying the use of that procedure.

Maintenance of Records

4. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 13.9.3 (Limited Tendering), for at least three years after the award of acontract.

Collection and Reporting of Statistics

5. Each Party shall prepare a statistical report on its covered procurement, and make such report publicly available on an official website. Each report shall cover one year and be available within two years of the end of the reporting period, and shall contain:

(a) for Section A procuring entities:

(i) the number and total value, for all such entities, of all contracts covered by this Chapter,

(ii) the number and total value of all contracts covered by this Chapter awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system, and

(iii) the number and total value of all contracts covered by this Chapter awarded by each such entity under limited tendering;

(b) for Section B procuring entities, the number and total value of contracts covered by this Chapter awarded by all such entities; and

(c) estimates for the data required under subparagraphs (a) and (b), with an explanation

of the methodology used to develop the estimates, if it is not feasible to provide the data.

Article 13.16. Disclosure of Information Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly information sufficient to demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing confidential information. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement 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 authorization 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 to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information if that 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 13.17. Ensuring Integrity In Procurement Practices

1. Each Party shall ensure that criminal, civil, or administrative measures exist that can address corruption, fraud, and other wrongful acts in its government procurement.

2. These measures may include procedures to debar, suspend, or declare ineligible from participation in the Party's procurements, for a stated period of time, a supplier that the Party has determined to have engaged in corruption, fraud, or other wrongful acts relevant to a supplier's eligibility to participate in a Party's government procurement. Each Party:

(a) may consider the seriousness of the supplier's acts or omissions and any remedial measures ot mitigating factors in making any decisions on debarment or suspension, including in making a decision on whether to reduce the period or extent of debarment or suspension at the supplier's request pursuant to paragraph 2(b)(ii); and

(b) shall provide a supplier of the other Party directly implicated by a proceeding applying procedures adopted or maintained under paragraph 2:

(i) reasonable notice that the proceeding was initiated, including a description of the nature of the proceeding, a statement of the authority under which the proceeding was initiated, and the reasons for the proceeding, and

(ii) reasonable opportunity to present facts and arguments in support of its position; and

(c) shall publish and update a list of enterprises and, subject to its law, natural persons it has debarred, suspended, or declared ineligible.

3. Each Party shall ensure that it has in place policies or procedures to address potential conflicts of interest on the part of those engaged in or having influence over a procurement.

4. Each Party may also put in place policies or procedures, including provisions in tender documentation, that require successful suppliers to maintain and enforce effective internal controls, business ethics, and compliance programs, taking into account the size of the supplier, particularly SMEs, and other relevant factors, for preventing and detecting corruption, fraud, and other wrongful acts.

Article 13.18. Domestic Review

1. Each Party shall maintain, establish, or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent, and effective manner, a challenge or complaint (complaint) by a supplier that there has been:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or had, an interest. The procedural rules for these complaints 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 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, if appropriate, the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or to its right to seek corrective measures under the administrative or judicial review procedure. Each Party shall make information on its complaint mechanisms generally available.

3. If a body other than the review authority initially reviews a complaint, a Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity that is the subject of the complaint.

4. If the review authority has determined that there has been a breach or a failure as referred to in paragraph 1, a Party may limit compensation for the loss or damages suffered to either the costs reasonably incurred in the preparation of the tender or in bringing the complaint, or both.

5. Each Party shall ensure that, if the review authority is not a court, its review procedures are conducted in accordance with the following procedures:

(a) a supplier shall be allowed sufficient time to prepare and submit a complaint in writing, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(b) a procuring entity shall respond in writing to a supplierâs complaint and provide all relevant documents to the review

authority;

(c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

(d) the review authority shall provide its decision on a supplierâs complaint in a timely manner, in writing, with an explanation of the basis for the decision.

6. Each Party shall adopt or maintain procedures that provide for:

(a) prompt interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter; and

(b) corrective action that may include compensation under paragraph 4.

The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether those measures should be applied. Just cause for not acting shall be provided in writing.

Article 13.19. Modifications and Rectifications of Annex

1. A Party shall notify any proposed modification or rectification (modification) to its Schedule to Annex 13-A by circulating a notice in writing to the other Party through the Agreement Coordinator designated under Article 30.5 (Agreement Coordinator and Contact Points). A Party shall provide compensatory adjustments for a change in coverage if necessary to maintain a level of coverage comparable to the coverage that existed prior to the modification. The Party may include the offer of compensatory adjustment in its notice.

2. A Party is not required to provide compensatory adjustments to the other Party if the proposed modification concerns one of the following:

(a) a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) rectifications of a purely formal nature and minor modifications to its Schedule to Annex 13-A, such as:

(i) changes in the name of a procuring entity,

(ii) the merger of one or more procuring entities listed in its Schedule,

(iii) the separation of a procuring entity listed in its Schedule into two or more procuring entities that are all added to the procuring entities listed in the same Section of the Annex, or

(iv) changes in website references,

and the other Party does not object under paragraph 3 on the basis that the proposed modification does not concern subparagraph (a) or (b).

3. A Party whose rights under this Chapter may be affected by a proposed modification that is notified under paragraph 1 shall notify the other Party of any objection to the proposed modification within 45 days of the date of circulation of the notice.

4. If a Party objects to a proposed modification, including a modification regarding a procuring entity on the basis that government control or influence over the entity's covered procurement has been effectively eliminated, that Party may request additional information, including information on the nature of any government control or influence, with a view to clarifying and reaching agreement on the proposed modification, including the procuring entity's continued coverage under this Chapter. The modifying Party and the objecting Party shall make every attempt to resolve the objection through consultations.

5. The Commission shall modify Annex 13-A to reflect any agreed modification.

Article 13.20. Facilitation of Participation by SMEs

1. The Parties recognize the important contribution that SMEs can make to economic growth and employment and the

importance of facilitating the participation of SMEs in government procurement.

2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

3. To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:

(a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;

(b) endeavor to make all tender documentation available free of charge;

(c) conduct procurement by electronic means or through other new information and communication technologies; and

(d) consider the size, design, and structure of the procurement, including the use of subcontracting by SMEs.

Article 13.21. Committee on Government Procurement

1. The Parties hereby establish a Committee on Government Procurement (Government Procurement Committee), composed of government representatives of each Party. On request of a Party, the Government Procurement Committee shall meet to address matters related to the implementation and operation of this Chapter, such as:

(a) facilitation of participation by SMEs in covered procurement, as provided for in Article 13.20 (Facilitation of Participation by SMEs);

(b) experiences and best practices in the use and adoption of information technology in conducting covered procurement. This could include topics such as the use of digital modeling in construction services; and

(c) experiences and best practices in the use and adoption of measures to promote opportunities for socially or economically disadvantaged people when conducting covered procurement.

Chapter 14. INVESTMENT

Article 14.1. Definitions

For the purposes of this Chapter:

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

enterprise means an enterprise as defined in Article 1.5 (General Definitions), and a branch of an enterprise;

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

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement,

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. An investment may include:

(a) an enterprise;

(b) shares, stock and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans; (1)

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to a Party's law; (2) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as liens, mortgages,

pledges, and leases,

but investment does not mean:

(i) an order or judgment entered in a judicial or administrative action;

(j) claims to money that arise solely from:

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

(ii) the extension of credit in connection with a commercial contract referred to in subparagraph (j)(i);

investor of a non-Party means, with respect to a Party, an investor that attempts to make, (3) is making, or has made an investment in the territory of that Party, that is not an investor of a Party; and

investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party, provided however that:

(a) a natural person who is a dual citizen is deemed to be exclusively a national of the State of his or her dominant and effective citizenship; and

(b) a natural person who is a citizen of a Party and a permanent resident of another Party is deemed to be exclusively a national of the Party of which that natural person is a citizen.

(1) Some forms of debt, such as bonds, debentures, and long-term notes or loans, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due, are less likely to have these characteristics.

(2) Whether a particular type of license, authorization, permit, or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under a Party's law. For greater certainty, among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

(3) For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or license.

Article 14.2. Scope

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

(a) investors of another Party;

(b) covered investments; and

(c) with respect to Article 14.10 (Performance Requirements) and Article 14.16 (Investment and Environmental, Health, Safety, and other Regulatory Objectives), all investments in the territory of that Party.

2. A Party's obligations under this Chapter apply to measures adopted or maintained by:

(a) the central, regional, or local governments or authorities of that Party; (4) and

(b) a person, including a state enterprise or another body, when it exercises any governmental authority delegated to it by central, regional, or local governments or authorities of that Party. (5)

3. For greater certainty, this Chapter, except as provided for in Annex 14-C (Legacy Investment Claims and Pending Claims) does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.

4. For greater certainty, an investor may only submit a claim to arbitration under this Chapter as provided under Annex 14-C

(Legacy Investment Claims and Pending Claims), Annex 14-D (Mexico-United States Investment Disputes), or Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).

(4) For greater certainty, the term "governments or authorities" means the organs of a Party, consistent with the principles of attribution under customary international law.

(5) For greater certainty, governmental authority is delegated to any person under the Party's law, including through a legislative grant or a government order, directive, or other act transferring or authorizing the exercise of governmental authority.

Article 14.3. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

2. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 17 (Financial Services).

3. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

4, For greater certainty, consistent with Article 15.2.2(a) (Scope), Article 15.5 (Market Access), and Article 15.8 (Development and Administration of Measures) apply to measures adopted or maintained by a Party relating to the supply of a service in its territory by a covered investment.

Article 14.4. National Treatment

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

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

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

4. For greater certainty, whether treatment is accorded in "like circumstances" under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 14.5. Most-Favored-Nation Treatment

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

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

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to investors in its territory, and to investments of those investors, of any other Party or of any non-Party.

4. For greater certainty, whether treatment is accorded in "like circumstances" under this Article depends on the totality of

the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 14.6. Minimum Standard of Treatment (6)

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "Fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

(6) This Article shall be interpreted in accordance with Annex 14-A (Customary International Law).

Article 14.7. Treatment In Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 14.12.5(b) (Non-Conforming Measures), each Party shall accord to investors of another Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for that loss.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 14.4 (National Treatment) but for Article 14.12.5(b) (Non-Conforming Measures).

Article 14.8. Expropriation and Compensation (7)

1. No Party shall expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid - converted into the currency of payment at the market rate of exchange prevailing on the date of payment (8) - shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. For greater certainty, whether an action or series of actions by a Party constitutes an expropriation shall be determined in accordance with paragraph 1 of this Article and Annex 14-B (Expropriation).

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that the issuance, revocation, limitation, or creation is consistent with Chapter 20 (Intellectual Property) and the TRIPS Agreement. (9)

(7) This Article shall be interpreted in accordance with Annex 14-B (Expropriation).

(8) For greater certainty, for the purposes of this paragraph, the currency of payment may be the same as the currency in which the fair market value is denominated.

(9) For greater certainty, the Parties recognize that, for the purposes of this Article, the term "revocation" of an intellectual property right includes the cancellation or nullification of that right, and the term "limitation" of an intellectual property right includes exceptions to that right.

Article 14.9. Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. These transfers include:

(a) contributions to capital; (10)

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, and other fees;

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

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement or employment contract; and

(e) payments made pursuant to Article 14.7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 14.8 (Expropriation and Compensation).

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. A Party shall not require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits, or other amounts derived from, or attributable to, investments in the territory of another Party.

4. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written

agreement between the Party and a covered investment or an investor of another Party.

5. Notwithstanding paragraphs 1, 2, and 4, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws (11) relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities or derivatives;

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

6. Notwithstanding paragraph 4, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under this Agreement, including as set out in paragraph 5.

(10) For greater certainty, contributions to capital include the initial contribution.

(11) For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.

Article 14.10. Performance Requirements

1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking: (12)

(12) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

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

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

(c) to purchase, use, or accord a preference to a good produced or a service supplied in its territory, or to purchase a good or a service from a person in its territory;

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

(e) to restrict sales of a good or a service in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a technology, a production process, or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party a good that the investment produces or a service that it supplies to a specific regional market or to the world market;

(h) (i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of a person of the Party, (13) or

(13) For the purposes of this Article, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive license.

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a technology; or

(i) to adopt:

(i) a given rate or amount of royalty under a license contract, or (ii) a given duration of the term of a license contract,

in regard to any license contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future license contract (14) freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes direct interference with that license contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the license contract is concluded between the investor and a Party.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

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

(b) to purchase, use, or accord a preference to a good produced in its territory, or to purchase a good from a person 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 the investment;

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

(e) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party, or

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a technology.

3. In relation to paragraphs 1 and 2:

(a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraphs 1(f), 1(h), 1(i), and 2(e) do not apply:

(i) if a Party authorizes use of an intellectual property right in accordance with Article 31 (15) of the TRIPS Agreement, or to a measure requiring the disclosure of proprietary information that fall within the scope of, and is consistent with, Article 39 of the TRIPS Agreement, or

(ii) if the requirement is imposed or the commitment or undertaking (16) is enforced by a court, administrative tribunal, or competition authority, after judicial or administrative process, to remedy an alleged violation of competition laws. (17)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a), and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement,

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), 1(b), 1(c), 2(a), and 2(b) do not apply to qualification requirements for a good or a service with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), 1(c), 1(f), 1(g), (h), 1(i), 2(a), 2(b), and 2(e) do not apply to government procurement.

(f) Paragraphs 2(a) and 2(b) do not apply to requirements imposed by an importing Party relating to the content of a good necessary to qualify for preferential tariffs or preferential quotas.

(g) Paragraphs 1(h), 1(i), and 2(e) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement.

(14) A "license contract" referred to in this subparagraph means a contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(15) The reference to "Article 31" includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN (01)/DEC/2).

(16) For greater certainty, for the purposes of this subparagraph, a commitment or undertaking includes a consent agreement.

(17) The Parties recognize that a patent does not necessarily confer market power.

Article 14.11. Senior Management and Boards of Directors

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to senior management positions a natural person of a particular nationality.

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

Article 14.12. Non-Conforming Measures

1. Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.10 (Performance Requirements), and Article 14.11 (Senior Management and Boards of Directors) do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.10 (Performance Requirements), or Article 14.11 (Senior Management and Boards of Directors).

2. Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.10 (Performance Requirements), and Article 14.11 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II.

3. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. (a) Article 14.4 (National Treatment) does not apply to any measure that falls within an exception to, or derogation from, the obligations imposed by:

(i) Article 20.8 (National Treatment), or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 20 (Intellectual Property Rights);

(b) Article 14.5 (Most-Favored-Nation Treatment) does not apply to any measure that falls within Article 5 of the TRIPS

Agreement, or an exception to, or derogation from, an obligation imposed by:

(i) Article 20.8 (National Treatment), or

(ii) Article 4 of the TRIPS Agreement.

5. Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), and Article 14.11 (Senior Management and Boards of Directors) do not apply to:

(a) government procurement; or

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

Article 14.13. Special Formalities and Information Requirements

1. Nothing in Article 14.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 14.4 (National Treatment) and Article 14.5 (Most-Favored-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or its covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 14.14. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Party or of the denying Party; and

(b) has no substantial business activities in the territory of any Party other than the denying Party.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non- Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

Article 14.15. Subrogation

If a Party, or an agency of a Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance, or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognize the subrogation or transfer of any right the investor would have possessed with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing that right to the extent of the subrogation, unless a Party or an agency of a Party authorizes the investor to act on its behalf.

Article 14.16. Investment and Environmental, Health, Safety, and other Regulatory Objectives

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, safety, or other regulatory objectives.

Article 14.17. Corporate Social Responsibility

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, which may include the OECD Guidelines for Multinational Enterprises. These standards, guidelines, and principles may address areas such as labor, environment, gender equality, human rights, indigenous and aboriginal peoples' rights, and corruption.

ANNEX 14-A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 14.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

ANNEX 14-B. EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right (18) or property interest in an investment.

2. Article 14.8.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 14.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact- based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred,

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations, (19) and

(iii) the character of the government action, including its object, context, and intent.

(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

(18) For greater certainty, the existence of a property right is determined with reference to a Party's law.

(19) For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

ANNEX 14-C. LEGACY INVESTMENT CLAIMS AND PENDING CLAIMS

1. Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:

(a) Section A of Chapter 11 (investment) of NAFTA 1994; (b) Article 1503(2) (State Enterprises) of NAFTA 1994; and

(c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Partyâs obligations under Section A of Chapter 11 (Investment) of NAFTA 1994. (20) (21)

2. The consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of:

(a) Chapter ll of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article ll of the New York Convention for an "agreement in writing"; and (c) Article I of the Inter-American Convention for an "agreement".

3. A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.

4. For greater certainty, an arbitration initiated pursuant to the submission of a claim under paragraph 1 may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the expiration of consent referenced in paragraph 3, and Article 1136 (Finality and Enforcement of an Award) of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.

5. For greater certainty, an arbitration initiated pursuant to the submission of a claim under Section B of Chapter 11 (Investment) of NAFTA 1994 while NAFTA 1994 is in force may proceed to its conclusion in accordance with Section B of Chapter 11 (investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the termination of NAFTA 1994, and Article 1136 of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.

6. For the purposes of this Annex:

(a) "legacy investment" means an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement;

(b) "investment", "investor", and "Tribunal" have the meanings accorded in Chapter 11 (investment) of NAFTA 1994; and

(c) "ICSID Convention", "ICSID Additional Facility Rules", "New York Convention", and "Inter-American Convention" have the meanings accorded in Article 14.D.1 (Definitions).

(20) For greater certainty, the relevant provisions in Chapter 2 (General Definitions), Chapter 11 (Section A) (nvestment), Chapter 14 (Financial Services), Chapter 15 (Competition Policy, Monopolies and State Enterprises), Chapter 17 (Intellectual Property), Chapter 21 (Exceptions), and Annexes I-VII (Reservations and Exceptions to Investment, Cross-Border Trade in Services and Financial Services Chapters) of NAFTA 1994 apply with respect to such a claim.

(21) Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).

ANNEX 14-D. MEXICO-UNITED STATES INVESTMENT DISPUTES

Article 14.D.1. Definitions

For the purposes of this Annex:

Annex Party means Mexico or the United States;

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of an Annex Party that is a party to a qualifying investment dispute, excluding an investor that is owned or controlled by a person of a non-Annex Party that, on the date of signature of this Agreement, the other Annex Party has determined to be a non-market economy for purposes of its trade remedy laws and with which no Party has a free trade agreement;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

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

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

non-disputing Annex Party means the Annex Party that is not a party to a qualifying investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;

qualifying investment dispute means an investment dispute between an investor of an Annex Party and the other Annex Party;

respondent means the Annex Party that is a party to a qualifying investment dispute; Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

Article 14.D.2. Consultation and Negotiation

1. In the event of a qualifying investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation, or mediation.

2. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

Article 14.D.3. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Annex a claim:

(i) that the respondent has breached:

(A) Article 14.4 (National Treatment) or Article 14.5 (Most-Favored- Nation Treatment), (22) except with respect to the establishment or acquisition of an investment, or

(B) Article 14.8 (Expropriation and Compensation), except with respect to indirect expropriation, and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Annex a claim:

(i) that the respondent has breached:

(A) Article 14.4 (National Treatment) or Article 14.5 (Most-Favored- Nation Treatment), except with respect to the establishment or acquisition of an investment, or

(B) Article 14.8 (Expropriation and Compensation), except with respect to indirect expropriation, and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. (23)

2. At least 90 days before submitting any claim to arbitration under this Annex, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and (d) the relief sought and the approximate amount of damages claimed.

3. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention; (24)

(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Annex when the claimant's notice of or request for arbitration (notice of arbitration):

(a) referred to in the ICSID Convention is received by the Secretary-General;

(b) referred to in the ICSID Additional Facility Rules is received by the Secretary- General;

(c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or

(d) referred to under any arbitral institution or arbitration rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Annex on the date of its receipt under the applicable arbitration rules.

5. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Annex shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

(22) For the purposes of this paragraph: (i) the "treatment" referred to in Article 14.5 (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations; and (ii) the "treatment" referred to in Article 14.5 only encompasses measures adopted or maintained by the other Annex Party, which for greater clarity may include measures adopted in connection with the implementation of substantive obligations in other international trade or investment agreements.

(23) For greater certainty, in order for a claim to be submitted to arbitration under subparagraph (b), an investor of the Party of the claimant must own or control the enterprise on the date of the alleged breach and the date on which the claim is submitted to arbitration.

(24) For greater certainty, if a claimant submits a claim under this subparagraph, any award made by the tribunal under Article 14.D.13 (Awards) constitutes an award under Chapter IV of the ICSID Convention (Arbitration).

Article 14.D.4. Consent to Arbitration

1. Each Annex Party consents to the submission of a claim to arbitration under this Annex in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Annex shall be deemed to satisfy the requirements of:

(a) Chapter ll of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article ll of the New York Convention for an "agreement in writing"; and

(c) Article I of the Inter-American Convention for an "agreement".

Article 14.D.5. Conditions and Limitations on Consent

1. No claim shall be submitted to arbitration under this Annex unless:

(a) the claimant (for claims brought under Article 14.D.3.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 14.D.3.1(b)) first initiated a proceeding before a competent court or administrative tribunal of the respondent with respect to the measures alleged to constitute a breach referred to in Article 14.D.3;

(b) the claimant or the enterprise obtained a final decision from a court of last resort of the respondent or 30 months have elapsed from the date the proceeding in subparagraph (a) was initiated; (25)

(c) no more than four years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 14.D.3.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 14.D.3.1(a)) or the enterprise (for claims brought under Article 14.D.3.1(b)) has incurred loss or damage;

(d) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(e) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of an Annex Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 14.D.3 (Submission of a Claim to Arbitration).

2. Notwithstanding paragraph 1(e), the claimant (for claims brought under Article 14.D.3.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 14.D.3.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

(25) The provisions in subparagraphs (a) and (b) do not apply to the extent recourse to domestic remedies was obviously futile.

Article 14.D.6. Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Annex.

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Annex, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 14.D.3.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Annex, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the

claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 14.D.3.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Annex, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. Arbitrators appointed to a tribunal for claims submitted under Article 14.D.3.1 shall:

(a) comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration, including guidelines regarding direct or indirect conflicts of interest, or any supplemental guidelines or rules adopted by the Annex Parties;

(b) not take instructions from any organization or government regarding the dispute; and

(c) not, for the duration of the proceedings, act as counsel or as party-appointed expert or witness in any pending arbitration under the annexes to this Chapter.

6. Challenges to arbitrators shall be governed by the procedures in the UNCITRAL Arbitration Rules.

Article 14.D.7. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 14.D.3.3 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Annex Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government, or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 14.D.13 (Awards) or that a claim is manifestly without legal merit.

(a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 14.D.13 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if an investor of an Annex Party submits a claim under this Annex, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 14.D.3 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. The tribunal and the disputing parties shall endeavor to conduct the arbitration in an expeditious and cost-effective manner.

11. Following the submission of a claim to arbitration under this Annex, if the disputing parties fail to take any steps in the proceedings for more than 150 days, or such period as they may agree with the approval of the tribunal, the tribunal shall notify the disputing parties that they shall be deemed to have discontinued the proceedings if the parties fail to take any steps within 30 days after the notice is received. If the parties fail to take any steps within that time period, the tribunal shall take note of the discontinuance in an order. If a tribunal has not yet been constituted, the Secretary-General shall assume these responsibilities.

12. In any arbitration conducted under this Annex, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

Article 14.D8. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Annex Party and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 14.D.7.2 and 14.D.7.3 (Conduct of the Arbitration), and Article 14.D.12 (Consolidation);

(d) minutes or transcripts of hearings of the tribunal, if available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the

duration of the discussion of that information.

3. Nothing in this Annex, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 32.2 (Essential Security) or Article 32.7 (Disclosure of Information). (26)

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Annex Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information, or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)Gi) of the disputing party that first submitted the information.

5. Nothing in this Annex requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavor to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

(26) For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 32.2 (Essential Security) or Article 32.7 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

Article 14.D.9. Governing Law

1. Subject to paragraph 2, when a claim is submitted under Article 14.D.3.1 (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. A decision of the Commission on the interpretation of a provision of this Agreement under Article 30.2 (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 14.D.10. Interpretation of Annexes

1. If a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 30.2 (Functions of the Commission) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.

Article 14.D.11. Expert Reports

Without prejudice to the appointment of other kinds of experts when authorized by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

Article 14.D.12. Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of the Party of the claimants.

5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 14.D.6 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5, and

(ii) that tribunal shall decide whether a prior hearing shall be repeated.

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Annex.

9. A tribunal established under Article 14.D.6 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 14.D.6 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 14.D.13. Awards

1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. (27)

2. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), it may recover only for loss or damage that is established on the basis of satisfactory evidence and that is not inherently speculative.

3. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage incurred in its capacity as an investor of an Annex Party.

4. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceedings, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Annex and the applicable arbitration rules.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration) and an award is made in favor of the enterprise:

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

6. A tribunal shall not award punitive damages.

7. An award made by a tribunal has no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until: (a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 14.D.3.3(d) (Submission of a Claim to Arbitration): @ 90 days have elapsed from the date the award was

rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

10. Each Annex Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 31.6 (Establishment of a Panel). The requesting Party may seek in those proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 31.17 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.

13. A claim that is submitted to arbitration under this Annex shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

(27) For greater certainty, in the final award the tribunal may not order the respondent to take or not to take other actions, including the amendment, repeal, adoption, or implementation of a law or regulation.

Article 14.D.14. Service of Documents

Delivery of notice and other documents to an Annex Party shall be made to the place named for that Annex Party in Appendix 1 (Service of Documents on an Annex Party). An Annex Party shall promptly make publicly available and notify the other Annex Party of any change to the place referred to in that Appendix.

APPENDIX 1. SERVICE OF DOCUMENTS ON AN ANNEX PARTY

Mexico

Notices and other documents in disputes under this Annex shall be served on Mexico by delivery to:

Dirección General de Consultoría Juridica de Comercio Internacional

Secretaría de Economía

Pachuca #189, piso 19

Col. Condesa

Demarcaci6n Territorial Cuauhtémoc

Ciudad de México

C.P. 06140

United States

Notices and other documents in disputes under this Annex shall be served on the United States by delivery to:

Executive Director (L/H-EX)

Office of the Legal Adviser & Bureau of Legislative Affairs US. Department of State

600 19th Street, NW

Washington, D.C. 20552

APPENDIX 2. PUBLIC DEBT

1. For greater certainty, no award shall be made in favor of a claimant for a claim under Article 14.D.3.1 (Submission of a Claim to Arbitration) with respect to default or non-payment of debt issued by a Party (28) unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of a relevant obligation in the Chapter.

2. No claim that a restructuring of debt issued by a Party, standing alone, breaches an obligation in this Chapter shall be submitted to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), provided that the restructuring is effected as provided for under the debt instrument's terms, including the debt instrument's governing law.

(28) For purposes of this Annex, "debt issued by a Party" includes, in the case of Mexico, "public debt" of Mexico as defined in Article 1 of the Federal Law on Public Debt (Ley Federal de Deuda Publica).

APPENDIX 3. SUBMISSION OF A CLAIM TO ARBITRATION

An investor of the United States may not submit to arbitration a claim that Mexico has breached an obligation under this Chapter either:

(a) on its own behalf under Article 14.D.3.1(a) (Submission of a Claim to Arbitration); or

(b) on behalf of an enterprise of Mexico that is a juridical person that the investor owns or controls directly or indirectly under Article 14.D.3.1(b) (Submission of a Claim to Arbitration),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under this Chapter, as distinguished from breach of other obligations under Mexican law, in proceedings before a court or administrative tribunal of Mexico.

ANNEX 14-E. MEXICO-UNITED STATES INVESTMENT DISPUTES RELATED TO COVERED GOVERNMENT CONTRACTS

1. Annex 14-D (Mexico-United States Investment Disputes) applies as modified by this Annex to the settlement of a qualifying investment dispute under this Chapter in the circumstances set out in paragraph 2. (29)

2. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under Annex 14-D (Mexico-United States Investment Disputes) a claim:

(i) that the respondent has breached any obligation under this Chapter, (30) provided that:

(A) the claimant is:

(1) a party to a covered government contract, or

(2) engaged in activities in the same covered sector in the territory of the respondent as an enterprise of the respondent that the claimant owns or controls directly or indirectly and that is a party to a covered government contract, and

(B) the respondent is a party to another international trade or investment agreement that permits investors to initiate dispute settlement procedures to resolve an investment dispute with a government, and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach;

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under Annex 14-D (Mexico-United States Investment Disputes) a claim:

(i) that the respondent has breached any obligation under this Chapter, provided that:

(A) the enterprise is:

(1) a party to a covered government contract,

(2) engaged in activities in the same covered sector in the territory of the respondent as the claimant and the claimant is a party to a covered government contract, or

(3) engaged in activities in the same covered sector in the territory of the respondent as another enterprise of the

respondent that the claimant owns or controls directly or indirectly and that is a party to a covered government contract, and

(B) the respondent is a party to another international trade or investment agreement that permits investors to initiate dispute settlement procedures to resolve an investment dispute with a government, and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. (31)

3. For the purposes of paragraph 2, if a covered government contract is terminated in a manner inconsistent with an obligation under this Chapter, the claimant or enterprise that was previously a party to the contract shall be deemed to remain a party for the duration of the contract, as if it had not been terminated.

4. No claim shall be submitted to arbitration under paragraph 2 if:

(a) less than six months have elapsed from the events giving rise to the claim; and

(b) more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under paragraph 2 and knowledge that the claimant (for claims brought under paragraph 2(a)) or the enterprise (for claims brought under paragraph 2(b)) has incurred loss or damage. (32)

5. For greater certainty, the Annex Parties may agree to modify or eliminate this Annex.

6. For the purposes of this Annex:

(a) "covered government contract" means a written agreement between a national authority of an Annex Party and a covered investment or investor of the other Annex Party, on which the covered investment or investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor in a covered sector;

(b) "covered sector" means:

(i) activities with respect to oil and natural gas that a national authority of an Annex Party controls, such as exploration, extraction, refining, transportation, distribution, or sale,

(ii) the supply of power generation services to the public on behalf of an Annex Party,

(iii) the supply of telecommunications services to the public on behalf of an Annex Party,

(iv) the supply of transportation services to the public on behalf of an Annex Party, or

(v) the ownership or management of roads, railways, bridges, or canals that are not for the exclusive or predominant use and benefit of the government of an Annex Party;

(c) "national authority" means an authority at the central level of government; (33) and

(d) "written agreement" means an agreement in writing, negotiated, and executed by two or more parties, whether in a single instrument or in multiple instruments. (34)

(29) For greater certainty, Annex 14-D (Mexico-United States Investment Disputes) includes its appendices.

(30) For the purposes of this paragraph: (i) the "treatment" referred to in Article 14.5 (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations; (ii) the "treatment" referred to in Article 14.5 only encompasses measures adopted or maintained by the other Annex Party, which for greater clarity may include measures adopted in connection with the implementation of substantive obligations in other international trade or investment agreements.

(31) For greater certainty, in order for a claim to be submitted to arbitration under subparagraph (b), an investor of the Party of the claimant must own or control the enterprise on the date of the alleged breach and the date on which the claim is submitted to arbitration.

(32) For greater certainty, Article 14.D.5.1(a)-(c) does not apply to claims under paragraph 2.

(33) For greater certainty, an authority at the central level of government includes any person, including a state enterprise or another body, when it exercises governmental authority delegated to it by an authority at the central level of government,

(34) For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, certificate, approval, or similar instrument issued by an Annex Party in its regulatory capacity, or a subsidy or grant, or a decree, order or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

Chapter 15. CROSS-BORDER TRADE IN SERVICES

Article 15.1. Definitions

For the purposes of this Chapter:

cross-border trade in services or cross-border supply of services means the supply of a service: (a) from the territory of a Party into the territory of another Party; (b) in the territory of a Party by a person of that Party to a person of another Party; or (c) by a national of a Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.5 (General Definitions), or a branch of an enterprise;

professional service means a service, the supply of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include a service provided by a tradesperson, or a vessel or aircraft crew member;

service supplied in the exercise of governmental authority means, for a Party, a service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of another Party means a person of a Party that seeks to supply or supplies a service; and

specialty air service means a specialized commercial operation 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, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Article 15.2. Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by a service supplier of another Party, including a measure relating to:

(a) the production, distribution, marketing, sale or delivery of a service; (1)

(b) the purchase or use of, or payment for, a service; (2)

(c) the access to or use of distribution, transport, or telecommunications networks or services in connection with the supply of a service;

(d) the presence in the Party's territory of a service supplier of another Party; or

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. In addition to paragraph 1:

(a) Article 15.5 (Market Access) and Article 15.8 (Development and Administration of Measures) apply to measures adopted or maintained by a Party relating to the supply of a service in its territory by a covered investment; and

(b) Annex 15-A (Delivery Services) applies to measures adopted or maintained by a Party relating to the supply of delivery services, including by a covered investment.

3. This Chapter does not apply to:

(a) a financial service as defined in Article 17.1 (Definitions), except that paragraph 2(a) applies if the financial service is

supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 17.1 (Definitions) in the Party's territory;

(b) government procurement;

(c) a service supplied in the exercise of governmental authority; or

(d) a subsidy or grant provided by a Party or a state enterprise, including government-supported loans, guarantees, or insurance.

4. This Chapter does not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) aircraft repair or maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance; and

(b) specialty air services.

5. This Chapter does not impose an obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. Annex 15-B (Committee on Transportation Services) and Annex 15-D (Programming Services) include additional provisions related to this Chapter.

(1) For greater certainty, subparagraph (a) includes the production, distribution, marketing, sale or delivery of a service by electronic means.

(2) For greater certainty, subparagraph (b) includes the purchase or use of, or payment for, a service by electronic means,

Article 15.3. National Treatment

1. Each Party shall accord to services or service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to services and service suppliers of the Party of which it forms a part.

3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

Article 15.4. Most-Favored-Nation Treatment

1. Each Party shall accord to services or service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of another Party or a non-Party.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to services and service suppliers of another Party or a non-Party.

3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers on the basis of legitimate public welfare objectives.

Article 15.5. Market Access

1. No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, a measure that:

(a) imposes a limitation on:

(i) the number of service suppliers, whether in the form of a numerical quota, monopoly, exclusive service suppliers, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in the form of a numerical quota or the requirement of an economic needs test,

(iii) the total number of service operations or the total quantity of service output expressed in terms of a designated numerical unit in the form of a quota or the requirement of an economic needs test, (3) 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 a numerical quota or the requirement of an economic needs test; or

(b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

(3) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

Article 15.6. Local Presence

No Party shall require a service supplier of another Party to establish or maintain a representative office or an enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 15.7. Non-Conforming Measures

1. Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 15.5 (Market Access), and Article 15.6 (Local Presence) do not apply to:

(a) an existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to a non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 15.5 (Market Access), or Article 15.6 (Local Presence).

2. Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 15.5 (Market Access), and Article 15.6 (Local Presence) do not apply to a measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in sub-paragraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

4. For greater certainty, a Party may request consultations with another Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

Article 15.8. Development and Administration of Measures

1. Each Party shall ensure that a measure of general application affecting trade in services is administered in a reasonable, objective, and impartial manner.

2. If a Party adopts or maintains a measure relating to licensing requirements and procedures, or qualification requirements and procedures, affecting trade in services, the Party shall, with respect to that measure:

(a) ensure that the requirement or procedure is based on criteria that are objective and transparent. For greater certainty, these criteria may include competence or ability to supply a service, or potential health or environmental impacts of an authorization, and competent authorities may assess the weight given to such criteria;

(b) ensure that the competent authority reaches and administers a decision in an independent manner;

(c) ensure that the procedure does not in itself prevent fulfilment of a requirement; and

(d) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization. (4)

3. If a Party requires an authorization for the supply of a service, it shall ensure that each of its competent authorities:

(a) to the extent practicable, permits an applicant to submit an application at any time;

(b) if a specific time period for applications exists, allows a reasonable period for the submission of an application;

(c) if an examination is required, schedules the examination at reasonably frequent intervals and provides a reasonable period of time to enable an applicant to request to take the examination;

(d) endeavors to accept an application electronically;

(e) to the extent practicable, provides an indicative timeframe for processing an application;

(f) to the extent practicable, ascertains without undue delay the completeness of an application for processing under the Party's law;

(g) accepts copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authority requires original documents to protect the integrity of the authorization process;

(h) at the request of the applicant, provides without undue delay information concerning the status of the application;

(i) if an application is considered complete under the Partyâs law, within a reasonable period of time after the submission of the application, ensures that the processing of the application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing; (5)

(j) if an application is considered incomplete for processing under the Party's law, within a reasonable period of time, to the extent practicable:

(i) informs the applicant that the application is incomplete,

(ii) if the applicant requests, provides guidance on why the application is considered incomplete,

(iii) provides the applicant with an opportunity (6) to provide the additional information that is required for the application to be considered complete, and

if none of the above is practicable, and the application is rejected due to incompleteness, ensures that the applicant is informed of the rejection within a reasonable period of time;

(k) if an application is rejected, to the extent possible, either upon its own initiative or upon the request of the applicant, informs the applicant of the reasons for rejection and, if applicable, the timeframe for an appeal or review of the decision to reject the application and the procedures for resubmission of an application; and

(l) ensures that authorization, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

4. Each Party shall ensure that any authorization fee charged by any of its competent authorities is reasonable, transparent, and does not, in itself, restrict the supply of the relevant service. For the purposes of this paragraph, an authorization fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

5. Each Party shall encourage its competent authorities, when adopting a technical standard, to adopt technical standards developed through an open and transparent process, and shall encourage a body designated to develop a technical standard to use an open and transparent process. 6. If a Party requires authorization for the supply of a service, the Party shall provide to a service supplier or person seeking to supply a service the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization. That information must

include:

(a) any fee;

(b) the contact information of a relevant competent authority;

(c) any procedure for appeal or review of a decision concerning an application;

(d) any procedure for monitoring or enforcing compliance with the terms and conditions of licenses;

(e) any opportunities for public involvement, such as through hearings or comments;

(f) any indicative timeframe for processing of an application;

(g) any requirement or procedure; and

(h) any technical standard.

7. Paragraphs 1 through 6 do not apply to the aspects of a measure set out in an entry to a Party's Schedule to Annex I, or to a measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out by that Party in its Schedule to Annex II.

(4) For greater certainty, a Party may require multiple applications for authorization if a service is within the jurisdiction of multiple competent authorities.

(5) A competent authority can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" includes in electronic form.

(6) For greater certainty, providing this opportunity does not require a competent authority to provide extensions of deadlines.

Article 15.9. Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorization, licensing, or certification of a service supplier, and subject to the requirements of paragraph 4, a Party may recognize any education or experience obtained, requirements met, or licenses or certifications granted, in the territory of another Party or a non-Party. That recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of another Party or a non-Party, Article 15.4 (Most-Favored-Nation Treatment) does not require the Party to accord recognition to the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of another Party.

3. If a Party is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, the Party shall afford adequate opportunity to another Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. Ifa Party accords recognition of the type referred to in paragraph 1 autonomously, the Party shall afford adequate opportunity to another Party to demonstrate that education or experience obtained, requirements met, or licenses or certifications granted, in that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between Parties or between a Party and a non-Party in the application of its standards or criteria for the authorization, licensing, or certification of a service supplier, or a disguised restriction on trade in services.

5. The Parties shall endeavor to facilitate trade in professional services as set out in Annex 15-C (Professional Services).

Article 15.10. Small and Medium-Sized Enterprises

1. With a view to enhancing commercial opportunities in services for SMEs, and further to Chapter 25 (Small and Medium-

Sized Enterprises), each Party shall endeavor to support the development of SME trade in services and SME-enabling business models, such as direct selling services,(7) including through measures that facilitate SME access to resources or protect individuals from fraudulent practices.

2. Further to Chapter 28 (Good Regulatory Practices), each Party shall endeavor to adopt or maintain appropriate mechanisms that consider the effects of regulatory actions on SME service suppliers and that enable small businesses to participate in regulatory policy development.

(7) Direct selling is the retail distribution of goods by an independent sales representative, and for which the representative is compensated based exclusively on the value of goods sold either by the representative or additional representatives recruited, trained, or otherwise supported by the representative. These goods include any product that may be distributed by other retail distribution service suppliers without a prescription or other special authorization, and may include food products, such as food and nutritional supplements in tablet, powder, or liquid capsule form; cosmetics; common consumer products for which medical expertise is not required, such as cotton swabs; and other hygiene and cleaning products. The term “nutritional supplement” applies to all health-maintenance products not intended to cure or treat a disease, and that are sold without prescription or other special authorization.

3. Further to Article 15.8 (Development and Administration of Measures), each Party shall endeavor to ensure that authorization procedures for a service sector do not impose disproportionate burdens on SMEs.

Article 15.11. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by a person of a non-Party, and the denying Party adopts or maintains a measure with respect to the non-Party or a person of the non-Party that prohibits a transaction with that enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to that enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by a person of a non-Party, or by a person of the denying Party, that has no substantial business activities in the territory of any Party other than the denying Party.

Article 15.12. Payments and Transfers

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws that relate to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities or derivatives; cosmetics; common consumer products for which medical expertise is not required, such as cotton swabs; and other hygiene and cleaning products. The term "nutritional supplement" applies to all health-maintenance products not intended to cure or treat a disease, and that are sold without prescription or other special authorization.

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

4. For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.

Chapter 16. TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 16.1. Definitions

For the purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

citizen means, with respect to Mexico, a national or a citizen according to the provisions of Articles 30 and 34, respectively, of the Mexico's Constitution (Constitución Política de los Estados Unidos Mexicanos); and

temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

Article 16.2. Scope

1. This Chapter applies to measures affecting the temporary entry of business persons of a Party into the territory of another Party.

2. This Chapter does not apply to measures affecting natural persons seeking access to the employment market of another Party, nor does it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. Nothing in this Agreement prevents a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to any Party under this Chapter.

Article 16.3. General Obligations

1. Each Party shall apply its measures relating to this Chapter expeditiously so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 16.4. Grant of Temporary Entry

1. Each Party shall grant temporary entry to a business person who is otherwise qualified for entry under its measures relating to public health and safety and national security, in accordance with this Chapter, including Annex 16-A (Temporary Entry for Business Persons).

2. A Party may refuse to grant temporary entry or issue an immigration document authorizing employment to a business person where the temporary entry of that person might adversely affect:

(a) the settlement of a labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of a person who is involved in that dispute.

3. If a Party refuses pursuant to paragraph 2 to grant temporary entry or issue an immigration document authorizing employment, it shall:

(a) provide written notice to the business person of the reasons for the refusal; and

(b) promptly provide written notice to the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

5. The sole fact that a Party grants temporary entry to a business person of another Party pursuant to this Chapter does not exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities.

Article 16.5. Provision of Information

1. Further to Article 29.2 (Publication), each Party shall publish online or otherwise make publicly available explanatory

material regarding the requirements for temporary entry under this Chapter that will enable a business person of another Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available to the other Parties in accordance with its law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including, if practicable, data specific to each occupation, profession, or activity.

Article 16.6. Temporary Entry Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including representatives of immigration authorities.

2. The Working Group shall meet at least once each year to consider: (a) the implementation and administration of this Chapter;

(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 16-A (Temporary Entry for Business Persons);

(d) proposed modifications of or additions to this Chapter; and (e) issues of common interest related to the temporary entry of business persons, such as the use of technologies related to processing of applications, that can be further explored among the Parties in other fora.

Article 16.7. Dispute Settlement

1. A Party may not initiate proceedings under Article 31.5 (Commission Good Offices, Conciliation, and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 16.3(1) unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) will be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 16.8. Relation to other Chapters

Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 30 (Administrative and Institutional Provisions), Chapter 31 (Dispute Settlement), Chapter 34 (Final Provisions), Article 29.2 (Publication), and Article 29.3 (Administrative Proceedings), this Agreement does not impose an obligation on a Party regarding its immigration measures.

ANNEX 16-A. TEMPORARY ENTRY FOR BUSINESS PERSONS

Section A. Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with the Party's measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside that Party's territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Paragraph 1 does not limit the ability of a business person seeking to engage in a business activity other than those set out in Appendix 1 to seek temporary entry under a Party's measures relating to the entry of business persons. 4. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain a numerical restriction relating to temporary entry under paragraph 1.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult, on request, with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section B. Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with the Party's measures applicable to temporary entry.

2. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain a numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section C. Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with the Party's measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain a numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section D. Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Appendix 2, if the business person otherwise complies with the Party's measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party; and

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party shall:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain a numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Chapter 17. FINANCIAL SERVICES

Article 17.1. Definitions

For the purposes of this Chapter:

computing facility means a computer server or storage device for the processing or storage of information for the conduct of business within the scope of the license, authorization, or registration of a covered person, but does not include a computer server or storage device of or those used to access:

(a) financial market infrastructures;

(b) exchanges or markets for securities or for derivatives such as futures, options, and swaps; or

(c) non-governmental bodies that exercise regulatory or supervisory authority over covered persons;

covered person means

(a) a financial institution of another Party; or

(b) a cross-border financial service supplier of another Party that is subject to regulation, supervision, and licensing, authorization, or registration by a financial regulatory authority of the Party; (1)

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 that service;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party by a person of that Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by a covered investment;

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

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of another Party;

financial market infrastructure means a multi-participant system in which a covered person participates with other financial service suppliers, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions;

financial service means a service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency; and

(d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

Banking and other financial services (excluding insurance)

(e) acceptance of deposits and other repayable funds from the public;

(f) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

(i) guarantees and commitments;

(j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(i) money market instruments (including checks, bills, certificates of deposits),

(ii) foreign exchange,

(iii) derivative products, including futures and options,

(iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,

(v) transferable securities, and

(vi) other negotiable instruments and financial assets, including bullion;

(k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and supply of services related to these issues;

(l) money broking;

(m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (0), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions, and on corporate restructuring and strategy;

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 that Party;

investment means "investment" as defined in Article 14.1 (Definitions), except that with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted, or debt instrument owned, by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 14 (Investment), if that loan or debt instrument meets the criteria for investments set out in Article 14.1 (Definitions);

investor of a Party means a Party, or a person of a Party, that attempts to make, (2) is making, or has made an investment in the territory of another Party;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.5 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or a financial institution that is owned or controlled by a Party; and

self-regulatory organization means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from a central or regional government.

(1) For greater certainty, whenever a cross-border financial service supplier of another Party is subject to regulation, supervision, and licensing, authorization, or registration by a financial regulatory authority of the Party, that supplier is a covered person for the purposes of this Chapter. For greater certainty, if a financial regulatory authority of the Party foregoes imposition of certain regulatory or supervisory requirements on the condition that a cross-border financial service supplier of another Party comply with certain regulatory or supervisory requirements imposed by a financial regulatory authority of the other Party, that supplier is a covered person.

(2) For greater certainty, the Parties understand that an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or applying for permits or licenses.

Article 17.2. Scope

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

(a) a financial institution of another Party;

(b) an investor of another Party, and an investment of that investor, in a financial institution in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapter 14 (Investment) and Chapter 15 (Cross-Border Trade in Services) apply to a measure described in paragraph 1 only to the extent that those Chapters are incorporated into this Chapter.

(a) Article 14.6 (Minimum Standard of Treatment), Article 14.7 (Treatment in Case of Armed Conflict or Civil Strife), Article 14.8 (Expropriation and Compensation), Article 14.9 (Transfers), Article 14.13 (Special Formalities and Information Requirements), Article 14.14 (Denial of Benefits), Article 14.16 (investment and Environmental, Health, Safety, and other Regulatory Objectives), and Article 15.11 (Denial of Benefits) are incorporated into and made a part of this Chapter.

(b) Article 15.12 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 17.3.3 (National Treatment), Article 17.5.1(b) and (c) (Market Access), and Article 17.6 (Cross-Border Trade Standstill).

3. This Chapter does not apply to a measure adopted or maintained by a Party relating to:

(a) an activity or a service forming part of a public retirement plan or statutory system of social security; or

(b) an activity or a service conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter applies to the extent that a Party allows an activity or service referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter does not apply to government procurement of financial services.

5. This Chapter does not apply to a subsidy or a grant provided by a Party, including a government supported loan, guarantee, and insurance, with respect to the cross-border supply of financial services by a cross-border supplier of another Party.

Article 17.3. National Treatment

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

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

3. Each Party shall accord to:

(a) financial services or cross-border financial service suppliers of another Party seeking to supply or supplying the financial services as specified by the Party in Annex 17-A (Cross-Border Trade); and

(b) financial services or cross-border financial service suppliers of another Party seeking to supply or supplying financial services subject to paragraph 4,

treatment no less favorable than that it accords to its own financial services and financial service suppliers, in like circumstances.

4. Subparagraph 3(b) does not require a Party to permit a cross-border financial service supplier of another Party to do business or solicit in the Party's territory. A Party may define "doing business" and "solicitation" in its law for the purposes of this paragraph.

5. The treatment to be accorded by a Party under paragraphs 1, 2, and 3 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to financial institutions of the Party, investors of the Party, and investments of those investors, in financial institutions; or financial services or financial service suppliers, of the Party.

6. For greater certainty, whether treatment is accorded in "like circumstances" under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors in financial institutions, investments in financial institutions, financial institutions, or financial services or financial service suppliers on the basis of legitimate public welfare objectives.

Article 17.4. Most-Favored-Nation Treatment

1. Each Party shall accord to:

(a) investors of another Party, treatment no less favorable than that it accords to investors of any other Party or of a non-Party, in like circumstances;

(b) financial institutions of another Party, treatment no less favorable than that it accords to financial institutions of any other Party or of a non-Party, in like circumstances;

(c) investments of investors of another Party in a financial institution, treatment no less favorable than that it accords to investments of investors of any other Party or of a non-Party in financial institutions, in like circumstances; and

(d) financial services or cross-border financial service suppliers of another Party, treatment no less favorable than that it accords to financial services and cross- border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to financial institutions of another Party or anon-Party; investors of another Party or a non-Party, and investments of those investors, in financial institutions; or financial services or cross-border financial service suppliers of another Party or non-Party.

3. For greater certainty, whether treatment is accorded in "like circumstances" under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors in financial institutions, investments in financial institutions, financial institutions, or financial services or financial service suppliers on the basis of legitimate public welfare objectives.

Article 17.5. Market Access

1. No Party shall adopt or maintain with respect to:

(a) a financial institution of another Party or, an investor of another Party seeking to establish those institutions;

(b) a cross-border financial service supplier of another Party seeking to supply or supplying the financial services as specified by the Party in Annex 17-A (Cross- Border Trade); or

(c) a cross-border financial service supplier of another Party seeking to supply or supplying financial services, subject to paragraph 2,

either on the basis of a regional subdivision or on the basis of its entire territory, a measure that:

(d) imposes a limitation on:

(i) the number of financial institutions or cross-border financial 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 financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) 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, (3) or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution or cross-border financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or 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 or cross-border financial service supplier may supply a service.

2. Subparagraph 1(c) does not require a Party to permit a cross-border financial service supplier of another Party to do business or solicit in the Party's territory. A Party may define "doing business" and "solicitation" in its law for the purposes of this paragraph.

3. No Party shall require a cross-border financial service supplier of another Party to establish or maintain a representative office or an enterprise, or to be resident, in its territory as a condition for the cross-border supply of a financial service, with respect to the financial services referred to in Article 17.6 (Cross-Border Trade Standstill) and the financial services as specified by the Party in Annex 17-A (Cross-Border Trade).

4. For greater certainty, a Party may require the registration or authorization of a cross-border financial service supplier of another Party or of a financial instrument.

(3) Subparagraph (d)(iii) does not cover measures of a Party that limit inputs for the supply of financial services.

Article 17.6. Cross-Border Trade Standstill

No Party shall adopt a measure restricting any type of cross-border trade in financial services by cross-border financial service suppliers of another Party that the Party permitted on January 1, 1994, or that is inconsistent with Article 17.3.3 (National Treatment), with respect to the supply of those services.

Article 17.7. New Financial Services (4)

Each Party shall permit a financial institution of another Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. (5) Notwithstanding Article 17.5.1(a) and(e) (Market Access), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. If a Party requires a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorization and may refuse the authorization only for prudential reasons.

(4) The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to another Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. That application will be subject to the law of the Party to which the application is made and, for greater certainty, is not subject to this Article.

(5) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

Article 17.8. Treatment of Customer Information

This Chapter does not require a Party to disclose information related to the financial affairs or accounts of individual customers of financial institutions or cross-border financial service suppliers.

Article 17.9. Senior Management and Boards of Directors

1. No Party shall require a financial institution of another Party to engage a natural person of a particular nationality as senior managerial or other essential personnel.

2. No Party shall require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 17.10. Non-Conforming Measures

1, Article 17.3 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment), Article 17.5 (Market Access), and Article 17.9 (Senior Management and Boards of Directors) do not apply to:

(a) an existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III,

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III, or

(iii) a local level of government;

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

(c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:

(i) immediately before the amendment, with Articles 17.3.1 and 17.3.2 (National Treatment), Article 17.4 (Most-Favored-

Nation Treatment), Article 17.5.1(a) (Market Access), or Article 17.9 (Senior Management and Boards of Directors), or

(ii) on the date of entry into force of this Agreement for the Party applying the non-conforming measure with Article 17.3.3 (National Treatment), Article 17.5.1(b) (Market Access), or Article 17.5.1(c) (Market Access).

2. Article 17.3 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment), Article 17.5 (Market Access), Article 17.6 (Cross-Border Trade Standstill), and Article 17.9 (Senior Management and Boards of Directors) do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector, or an activity, as set out by that Party in Section B of its Schedule to Annex IL.

3. A non-conforming measure, set out in a Partyâs Schedule to Annex I or II as not subject to Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.11 (Senior Management and Boards of Directors), Article 15.3 (National Treatment) or Article 15.4 (Most-Favored-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 17.3 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment) or Article 17.9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure, sector, subsector or activity set out in the Partyâs schedule to Annex I or II is covered by this Chapter.

4, (a) Article 17.3 (National Treatment) does not apply to a measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 20.8 (National Treatment), or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 20 (Intellectual Property Rights).

(b) Article 17.4 (Most-Favored-Nation Treatment) does not apply to a measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 20.8 (National Treatment), or

(ii) Article 4 of the TRIPS Agreement.

Article 17.11. Exceptions

1. Notwithstanding the other provisions of this Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textiles and Apparel), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 10 (Trade Remedies), and Chapter 11 (Technical Barriers to Trade), a Party is not prevented from adopting or maintaining a measure for prudential reasons, (6) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If the measure does not conform with the provisions of this Agreement to which this exception applies, the measure must not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 14 (Investment), Chapter 15 (Cross- Border Trade in Services), Chapter 18 (Telecommunications) including specifically Article 18.26 (Relation to Other Chapters), or Chapter 19 (Digital Trade), applies to a non-discriminatory measure of general application taken by a public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph does not affect a Party's obligations under Article 14.10 (Performance Requirements) with respect to a measure covered by Chapter 14 (Investment), under Article 14.9 (Transfers) or Article 15.12 (Cross Border Trade in Services, Payments and Transfers).

3. Notwithstanding Article 14.9 (Transfers) and Article 15.12 (Payments and Transfers), as incorporated into this Chapter, a Party may prevent or limit a transfer by a financial institution or a cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to that institution or supplier, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining a measure necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non- Parties where like conditions prevail,

or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

(6) The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

Article 17.12. Recognition

1. A Party may recognize prudential measures of another Party or a non-Party in the application of a measure covered by this Chapter. That recognition may be:

(a) accorded autonomously;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with another Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

4. For greater certainty, nothing in Article 17.4 (Most-Favored-Nation Treatment) requires a Party to accord recognition to prudential measures of any other Party.

Article 17.13. Transparency and Administration of Certain Measures

1. Chapter 28 (Good Regulatory Practices) and Chapter 29 (Publication and Administration) do not apply to a measure relating to this Chapter.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Each Party shall, to the extent practicable:

(a) publish in advance any regulation that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and other Parties with a reasonable opportunity to comment on that proposed regulation.

4. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons and other Parties with respect to the proposed regulation. For greater certainty, a Party may address those comments collectively on an official government website.

5. To the extent practicable, each Party should allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons and other Parties regarding measures of general application covered by this Chapter.

7. If a Party requires authorization for the supply of a financial service, it shall ensure that its financial regulatory authorities:

(a) to the extent practicable, permit an applicant to submit an application at any time;

(b) allow a reasonable period for the submission of an application if specific time periods for applications exist;

(c) provide to service suppliers and persons seeking to supply a service the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending, and renewing such authorization;

(d) to the extent practicable, provide an indicative timeframe for processing of an application;

(e) endeavor to accept applications in electronic format;

(f) accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the financial regulatory authorities require original documents to protect the integrity of the authorization process;

(g) at the request of the applicant, provide without undue delay information concerning the status of the application;

(h) in the case of an application considered complete under the Party's laws and regulations, within a reasonable period of time taking into account the available resources of the competent authority after the submission of the application, ensure that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;

(i) in the case of an application considered incomplete under the Partyâs law, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete,

(ii) at the request of the applicant, provide guidance on why the application is considered incomplete, and

(iii) provide the applicant with the opportunity (7) to provide the additional information that is required to complete the application; and

if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(j) in the case of a rejected application, to the extent practicable, either on its own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application;

(k) with respect to an authorization fee (8) charged by financial regulatory authorities:

(i) provide applicants with a schedule of fees or information on how fee amounts are calculated, and

(ii) do not use the fees as a means of avoiding the Party's commitments or obligations under this Chapter; and

(l) ensure that authorization, once granted, enters into effect without undue delay.

(7) For greater certainty, this opportunity does not require a competent authority to provide extensions of deadlines.

(8) An authorization fee includes a licensing fee and fees relating to qualification procedures but does not include a fee 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.

Article 17.14. Self-Regulatory Organizations

If a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization in order to provide a financial service in or into its territory, it shall ensure that the self- regulatory organization observes the obligations contained in this Chapter.

Article 17.15. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another 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 or require access to the Partyâs lender of last resort facilities.

Article 17.16. Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorization of insurance

lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavor to maintain or improve those procedures, as appropriate, to expedite availability of insurance services by licensed suppliers.

Article 17.17. Transfer of Information

No Party shall prevent a covered person from transferring information, including personal information, into and out of the Party’s territory by electronic or other means when this activity is for the conduct of business within the scope of the license, authorization, or registration of that covered person. Nothing in this Article restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent this Article.

Article 17.18. Location of Computing Facilities

1. The Parties recognize that immediate, direct, complete, and ongoing access by a Party's financial regulatory authorities to information of covered persons, including information underlying the transactions and operations of such persons, is critical to financial regulation and supervision, and recognize the need to eliminate any potential limitations on that access.

2. No Party shall require a covered person to use or locate computing facilities in the Party's territory as a condition for conducting business in that territory, so long as the Party's financial regulatory authorities, for regulatory and supervisory purposes, have immediate, direct, complete, and ongoing access to information processed or stored on computing facilities that the covered person uses or locates outside the Party's territory. (9)

3. Each Party shall, to the extent practicable, provide a covered person with a reasonable opportunity to remediate a lack of access to information as described in paragraph 2 before the Party requires the covered person to use or locate computing facilities in the Partyâs territory or the territory of another jurisdiction. (10)

4. Nothing in this Article restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this Article.

(9) For greater certainty, access to information includes access to information of a covered person that is processed or stored on computing facilities of the covered person or on computing facilities of a third-party service supplier. For greater certainty, a Party may adopt or maintain a measure that is not inconsistent with this Agreement, including any measure consistent with Article 17.11.1 (Exceptions), such as a measure requiring a covered person to obtain prior authorization from a financial regulatory authority to designate a particular enterprise as a recipient of that information, or a measure adopted or maintained by a financial regulatory authority in the exercise of its authority over a covered person's business continuity planning practices with respect to maintenance of the operation of computing facilities.

(10) For greater certainty, so long as a Party's financial regulatory authorities do not have access to information as described in paragraph 2, the Party may, subject to paragraph 3, require a covered person to use or locate computing facilities either in the territory of the Party or the territory of another jurisdiction where the Party has that access.

Article 17.19. Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services (Financial Services Committee). The principal representative of each Party must be an official of the Party's authority responsible for financial services set out in Annex 17-B (Authorities Responsible for Financial Services).

2. The Financial Services Committee shall supervise the implementation of this Chapter and its further elaboration, including by considering issues regarding financial services that are referred to it by a Party.

3. The Financial Services Committee shall meet as the Parties decide to assess the functioning of this Agreement as it applies to financial services. The Financial Services Committee shall inform the Commission of the results of any meeting. The Parties may invite, as appropriate, representatives of their domestic financial regulatory authorities to attend meetings of the Committee.

Article 17.20. Consultations

1. A Party may request, in writing, consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to this request. The consulting Parties shall report the results of their consultations to the Financial Services Committee.

2. A Party may request information on an existing non-conforming measure of another Party as referred to in Article 17.10.1 (Non-Conforming Measures). Each Party's financial authorities specified in Annex 17-B (Authorities Responsible for Financial Services) shall be the contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulatory authorities or the requirements of an agreement or arrangement between financial regulatory authorities of the Parties, or to require a financial regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 17.21. Dispute Settlement

1. Chapter 31 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. For disputes arising under this Chapter or a dispute in which a Party invokes Article 17.11 (Exceptions), when selecting panelists to compose a panel under Article 31.9 (Panel Composition), each disputing Party shall select panelists so that:

(a) the chairperson has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in Article 31.8.2 (Roster and Qualifications of Panelists); and

(b) each of the other panelists:

(i) has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in paragraph (2)(b) through (2)(d) of Article 31.8.2 (Roster and Qualifications of Panelists); or

(ii) meets the qualifications set out in Article 31.8.2 (Roster and Qualification of Panelists).

3. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 31.19 (Non-Implementation - Suspension of Benefits), shall seek the views of financial services experts, as necessary.

4. Notwithstanding Article 31.19 (Non-Implementation - Suspension of Benefits), when a panel's determination is that a Party's measure is inconsistent with this Agreement and the measure affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or

(b) the financial services sector and another sector, the complaining Party may not suspend benefits in the financial services sector that have an effect that exceeds the effect of the measure in the complaining Party's financial services sector.

ANNEX 17-A. CROSS-BORDER TRADE

Canada (11)

Insurance and Insurance-Related Services

1, Articles 17.3.3 (National Treatment) and 17.5.1 (Market Access) apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross- border supply of financial services" in Article 17.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(I) maritime transport and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and

(ii) goods in international transit;

(b) Reinsurance and retrocession;

(c) services auxiliary to insurance as described in subparagraph (d) of the definition of "financial service" in Article 17.1 (Definitions); and

(d) insurance intermediation such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 17.1 (Definitions) of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and Other Financial Services (excluding insurance)

2. Articles 17.3.3 (National Treatment) and 17.5.1 (Market Access) apply to the cross-border supply of or trade in financial services, as defined in subparagraphs (a) of the definition of "cross-border supply of financial services" in Article 17.1 (Definitions), with respect to:

(a) the provision and transfer of financial information and financial data processing as described in subparagraph (O) of the definition of "financial service" in Article 17.1 (Definitions);

(b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of "financial service" in Article 17.1 (Definitions); and

(c) electronic payment services for payment card transactions falling within subparagraph (h) of the definition of "financial service" in Article 17.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:

(i) the processing of financial transactions, such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions, and

(ii) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions,

but not including the transfer of funds to and from transactors' accounts. (12)

(d) the following services if they are provided to a collective investment scheme located in Canada:

(i) investment advice, and

(ii) portfolio management services, excluding:

(A) trustee services, and

(B) custodial services and execution services that are not related to managing a collective investment scheme.

3. For the purposes of paragraph 3, in Canada:

(a) payment card means a "payment card" as defined under the Payment Card Networks Act as of January 1, 2015. For greater certainty, physical and electronic forms of credit and debit cards are included in the definition. For greater certainty, credit cards include pre-paid cards.

(b) a collective investment scheme means, an "investment fund" as defined under the relevant Securities Act.

(11) For greater certainty, Canada requires that a cross-border financial services supplier appoint a local agent in Canada that is provided with power of attorney.

(12) Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

(13) In Canada, a financial institution organized in the territory of another Party can only provide custodial services to a collective investment scheme located in Canada if the financial institution has shareholders' equity equivalent to at least $100 million.

Mexico

Insurance and insurance-related services

1. Article 17.3.3 (National Treatment) and Article 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 17.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation, space launching and freight (including satellites), with such insurance to cover all or any of the following: the goods being transported; and the vehicle transporting the goods, when such vehicles have foreign registration or are property of persons domiciled abroad, and

(ii) goods in international transit;

(b) any other insurance of risks, if the person seeking to purchase the insurance demonstrates that none of the insurance companies authorized to operate in Mexico is able or deems convenient to enter into such insurance proposed to it;

(c) reinsurance and retrocession; and

(d) insurance intermediation, as referred to in subparagraph (c) of the definition of "financial service" in Article 17.1 (Definitions), and services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 17.1 (Definitions), only in respect of insurance referred to in the section of Mexico in this Annex.

Banking and other financial services (excluding insurance)

2. Article 17.3.3 (National Treatment) and Article 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 17.1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 17.1 (Definitions);

(b) advisory and other auxiliary services, (14) excluding intermediation, and creditreference and analysis, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 17.1 (Definitions);

(c) the following services if they are provided to a collective investment scheme in Mexico:

(i) investment advice, and

(ii) portfolio management services, excluding:

(A) trustee services, and

(B) custodial services and execution services that are not related to managing a collective investment scheme; and

(d) electronic payment services for payment card transactions falling within subparagraph (h) of the definition of "financial service" in Article 17.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:

(i) receiving and sending messages for: authorization requests, authorization responses (approvals or declines), stand-in authorizations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages,

(ii) calculation of fees and balances derived from transactions of acquirers and issuers, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives,

(iii) the provision of periodic reconciliation, summaries and instructions regarding the net financial position of acquirers and issuers, and their agents and representatives for approved transactions,

(iv) value-added services related to the main processing activities referred to in subparagraphs (i), (ii), and (iii), such as fraud prevention and mitigation activities, and administration of loyalty programs, and

(v) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions, as referenced in subparagraphs (i)-(iv),

but not including the transfer of funds to and from transactors' accounts.

For Mexico, a payment card means a credit card, debit card, and reloadable card in physical form or electronic format, as defined under Mexican law.

3. For the purposes of paragraph 2(b) and 2(c), in Mexico a collective investment scheme means the "Managing Companies of Investment Funds (Sociedades Operadoras de Fondos de Inversión)" established under the Investment Funds Law (Ley de Fondos de Inversión). A financial institution organized in the territory of another Party will only be authorized to provide portfolio management services to a collective investment scheme located in Mexico if it provides the same services in the territory of the Party where it is established.

(14) The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (0) of the definition of "financial service" in Article 17.1 (Definitions).

(15) Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

United States

Insurance and insurance-related services

1, Article 17.3.3 (National Treatment) and Article 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 17.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with that insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

(ii) goods in international transit; and

(b) reinsurance and retrocession; services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 17.1 (Definitions); and insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 17.1 (Definitions).

Banking and other financial services (excluding insurance)

2. Article 17.3.3 (National Treatment) and 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross- border supply of financial services" in Article 17.1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 17.1 (Definitions);

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 17.1 (Definitions);

(c) investment advice to a collective investment scheme located in the Party's territory;

(d) portfolio management services, excluding

(i) trustee services, and

(ii) custodial services and execution services that are not related to managing a collective investment scheme; and

(e) electronic payment services for payment card transactions falling within subparagraph (h) of the definition of "financial service" in Article 17.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:

(i) the processing of financial transactions such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions, and

(ii) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions,

but not including the transfer of funds to and from transactors' accounts.

For the United States, a payment card means a credit card, charge card, debit card, check card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing similar functions as these cards, and the unique account number associated with that card, product, or service. (16)

3. For the purposes of subparagraphs 2(c) and 2(d), for the United States, a collective investment scheme means an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. (17)

(16) Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

(17) Custodial services are included in the scope of the commitment made by the United States under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

ANNEX 17-B. AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

(a) for Canada, the Department of Finance of Canada;

(b) for Mexico, the Ministry of Finance and Public Credit (Secretaria de Hacienda y Crédito Puúlico); and

(c) for the United States, the Department of the Treasury for the purposes of Annex 17-C (Mexico-United States Investment Disputes in Financial Services) and for all matters involving banking, securities, and financial services other than insurance, and the Department of the Treasury, in cooperation with the Office of the U.S. Trade Representative, for insurance matters.

ANNEX 17-C. MEXICO-UNITED STATES INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Annex 14-D (Mexico-United States Investment Disputes) applies as modified by this Annex to the settlement of a qualifying investment dispute under this Chapter.

2. In the event that a disputing party considers that a qualifying investment dispute under this Chapter cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under Annex 14-D a claim:

(i) that the respondent has breached:

(A) Article 17.3.1 (National Treatment), Article 17.3.2 (National Treatment), Article 17.4.1(a) (Most-Favored-Nation Treatment), Article 17.4.1(b) (Most-Favored-Nation Treatment), or Article 17.4.1(c) (Most-Favored-Nation Treatment) (18) except with respect to the establishment or acquisition of an investment; or

(B) Article 14.8 (Expropriation and Compensation) as incorporated into this Chapter under Article 17.2.2(a) (Scope), except with respect to indirect expropriation; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of a financial institution of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under Annex 14-D a claim:

(i) that the respondent has breached:

(A) Article 17.3.1 (National Treatment), Article 17.3.2 (National Treatment), Article 17.4.1(a) (Most-Favored-Nation Treatment), Article 17.4.1(b) (Most-Favored-Nation Treatment), or Article 17.4.1(c) (Most-Favored-Nation Treatment), except with respect to the establishment or acquisition of an investment; or

(B) Article 14.8 (Expropriation and Compensation) as incorporated into this Chapter under Article 17.2.2(a), except with respect to indirect expropriation; and

(ii) that the financial institution has incurred loss or damage by reason of, or arising out of, that breach.

3. If an investor of an Annex Party submits a claim to arbitration under Annex 14-D (Mexico- United States Investment Disputes) as modified by this Annex:

(a) the presiding arbitrator and the other arbitrators shall be selected so that the presiding arbitrator has expertise or experience in financial services law or practice such as the regulation of financial institutions, and, to the extent practicable, the other arbitrators have expertise or experience in financial services law or practice such as the regulation of financial institutions; and

(b) the respondent shall endeavor to consult with its domestic financial regulatory authorities on the claim.

4. No claim shall be submitted to arbitration under Annex 14-D (Mexico-United States Investment Disputes) as modified by this Annex unless the conditions in Article 14.D.5.1 (Conditions and Limitations on Consent) of Annex 14-D (Mexico-United States Investment Disputes) are satisfied, except the relevant time period in subparagraph (b) is 18 months.

5. If an investor of an Annex Party submits a claim to arbitration under Annex 14-D (Mexico- United States Investment Disputes) as modified by this Annex, and the respondent invokes Article 17.11 (Exceptions) as a defense, the following provisions of this Article apply:

(a) The respondent shall, no later than the date the tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Annex Party of the claimant, as set out in Annex 17-B (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Annex Party of the claimant on the issue of whether and to what extent Article 17.11 (Exceptions) is a valid defense to the claim.

(i) The respondent shall set out in the request the text of a proposed joint determination that specifies the claims to which it considers Article 17.11 (Exceptions) a valid defense.

(ii) The respondent shall promptly provide the tribunal, if constituted, a copy of the request.

(iii) The authorities of the Annex Party of the claimant shall notify the authorities of the respondent in writing that the request has been received.

(iv) The arbitration may proceed with respect to the claim only as provided in subparagraph (g). (19)

(b) The authorities referred to in subparagraph (a) shall attempt in good faith to make a joint determination as described in that subparagraph within 120 days after the date of the written request for that determination. The authorities may, in extraordinary circumstances, agree to extend the date for a joint determination for up to 60 additional days.

(c) The authorities of the Annex Party of the claimant shall notify the authorities of the respondent within 120 days after the date of the written request for a joint determination under subparagraph (a), or within the period agreed under subparagraph (b), whichever is longer, whether the authorities of the Annex Party of the claimant agree to the proposed joint determination submitted under subparagraph (a)(i), propose an alternative joint determination, or will not, for any reason, agree to a joint determination.

(d) If the authorities of the Annex Party of the claimant make no notification under subparagraph (c), they shall be presumed to take a position that is consistent with that of the authorities of the respondent, and a joint determination shall deemed to be made regarding the issue of whether and to what extent Article 17.11 (Exceptions) is a valid defense to the claim as set out in the proposed joint determination submitted under subparagraph (a)(i).

(e) Any joint determination made or deemed to be made shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the tribunal. The joint determination shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that determination.

(f) If the authorities referred to in subparagraph (a), within 120 days after the date of the written request for a joint determination under subparagraph (a) or within the date agreed under subparagraph (b), whichever is longer, have not

made a determination as described in subparagraph (a), the tribunal shall decide the issue left unresolved by the authorities.

(i) The tribunal shall draw no inference regarding the application of Article 17.11 (Exceptions) from the fact that the competent authorities have not made a determination as described in subparagraph (a).

(ii) The Annex Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 17.11 (Exceptions) is a valid defense to the claim. Unless it makes such a submission, the Annex Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 17.11 (Exceptions) not inconsistent with that of the respondent.

(g) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:

(i) 10 days after the date a joint determination under subparagraph (a) has been received by the disputing parties and, if constituted, the tribunal; or

(ii) 10 days after the expiration of the 120-day period following the request for a joint determination under subparagraph (a) or the expiration of the period agreed under subparagraph (b), whichever is longer.

(h) On the request of the respondent made within 30 days after the expiration of the 120- day period following the request for a joint determination under subparagraph (a), or within 30 days after the expiration of the period agreed under subparagraph (b), whichever is longer, or, if the tribunal has not been constituted as of the expiration of the 120-day or the period agreed under subparagraph (b), within 30 days after the tribunal is constituted, the tribunal shall address and decide the issue or issues left unresolved by the authorities as referred to in subparagraph (c) prior to deciding the merits of the claim for which Article 17.11 (Exceptions) has been invoked by the respondent as a defense. Failure of the respondent to make that request is without prejudice to the right of the respondent to invoke Article 17.11 (Exceptions) as a defense at any appropriate phase of the arbitration.

6. If a respondent asserts that the measure alleged to be a breach is within the scope of a non-conforming measure set out in the responding Party's Schedule to Annex II, Article 10 of Annex 14-D (Mexico-United States Investment Disputes) shall apply to any request of the respondent for an interpretation of the Commission on the issue.

(18) For the purposes of this paragraph: (i) the "treatment" referred to in Article 17.4.1(a) (Most-Favored-Nation Treatment), Article 17.4.1(b) (Most-Favored-Nation Treatment), and Article 17.4.1(c) (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations; and (ii) the "treatment" referred to in these subparagraphs only encompasses measures adopted or maintained by the other Annex Party, which for greater clarity may include measures adopted in connection with the implementation of substantive obligations in other international trade or investment agreements.

(19) The term "joint determination" as used in this subparagraph refers to a determination by the authorities responsible for financial services of the respondent and of the Annex Party of the claimant, as set out in Annex 17-B (Authorities Responsible for Financial Services).

ANNEX 17-D. LOCATION OF COMPUTING FACILITIES

Article 17.18 (Location of Computing Facilities) does not apply to existing measures of Canada for one year after the entry into force of this Agreement.

Chapter 18. TELECOMMUNICATIONS

Article 18.1. Definitions

For the purposes of this Chapter:

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other

than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 1.5 (General Definitions) and a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically, or technically substituted in order to supply a service;

interconnection means linking suppliers providing public telecommunications services in order to allow a user of one supplier to communicate with a user of another supplier and to access services provided by another supplier;

leased circuit means a telecommunications facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user and supplied by a supplier of a fixed telecommunications service;

license means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications service, including concessions, permits or registrations;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market (1)

mobile service means a public telecommunications service supplied through mobile wireless means;

network element means a facility or equipment used in supplying a fixed public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

non-discriminatory means according treatment no less favorable than that accorded to another user of like public telecommunications services in like circumstances, including with respect to timeliness;

number portability means the ability of an end-user of public telecommunications services to retain the same telephone numbers when switching between suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

public telecommunications service means a telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally that typically involves the transmission of customer-supplied information between two or more points without an end-to-end change in the form or content of the customer's information. This service may include telephone and data transmission;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection so that a supplier of a public telecommunications service that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

roaming service means a mobile service provided pursuant to an agreement between suppliers of public telecommunications services that enables an end-user to use their mobile handset or other device for voice, data, or messaging services while outside the home public telecommunications network of the mobile handset or other device;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means a body or bodies responsible for the regulation of telecommunications;

user means a service consumer or a service supplier;

value-added service means a telecommunications service employing a computer processing application that:

(a) acts on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provides a customer with additional, different or restructured information; or

(c) involves customer interaction with stored information; and virtual co-location means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain, and repair that equipment.

(1) For Mexico, a major supplier includes a preponderant economic agent deemed as such by virtue of its national share in the supply of telecommunication services, when it directly or indirectly holds more than fifty percent national share. This percentage shall be measured either by the number of users, subscribers, traffic on their networks or the utilized capacity of said networks, according to the information held by the Federal Telecommunications Institute.

Article 18.2. Scope

1. This Chapter applies to a measure affecting trade in telecommunications services, including:

(a) a measure relating to access to and use of public telecommunications networks or services;

(b) a measure relating to obligations of suppliers of public telecommunications services;

(c) a measure relating to the supply of value-added services; and

(d) any other measure relating to public telecommunications networks or services.

2. This Chapter does not apply to a measure relating to broadcast or cable distribution of radio or television programming, except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services, as provided under Article 18.3 (Access and Use). (2)

3. Nothing in this Chapter shall be construed to require a Party:

(a) to establish, construct, acquire, lease, operate, or provide a telecommunications network or service not offered to the public generally, or require a Party to compel an enterprise to do so; or

(b) to compel an enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

4. Annex 18-A (Rural Telephone Suppliers) includes additional provisions relating to the scope of this Chapter.

(2) For greater certainty, to the extent that a services supplier engaged in the broadcast or cable distribution of radio or television programming is also engaged in the supply of public telecommunications services, measures relating to the supply of those public telecommunications by that services supplier are covered by this Chapter.

Article 18.3. Access and Use

1. Each Party shall ensure that any enterprise of another Party has access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, inter alia, to paragraphs 2 through 6. (3)

2. Each Party shall ensure that any enterprise of another Party is permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of its choice.

3. Each Party shall ensure that any enterprise of another Party may use public telecommunications networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications, and to

access information contained in databases or otherwise stored in machine-readable form in the territory of a Party.

4. Notwithstanding paragraph 3, a Party may take measures necessary to ensure the security and confidentiality of messages or to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or 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 and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that the conditions for access to and use of public telecommunications networks and services satisfy the criteria set out in paragraph 5, those conditions may include:

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;

(b) a requirement, if necessary, for the interoperability of those networks and services;

(c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and

(d) notification, registration, and licensing which, if adopted or maintained, is transparent and provides for processing applications filed thereunder in accordance with a Party's laws or regulations.

(3) For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license to supply a public telecommunications service within its territory.

Article 18.4. Obligations Relating to Suppliers of Public Telecommunications Services Interconnection

1. Each Party shall ensure that a supplier of public telecommunications services in its territory provides, directly or indirectly within its territory, interconnection with a supplier of public telecommunications services of another Party.

2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.

3. Further to paragraph 1, each Party shall ensure that a supplier of public telecommunications services in its territory takes reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only uses that information for the purpose of providing these services.

Resale

4. No Party shall prohibit the resale of a public telecommunications service.

Roaming

5. No Party shall prohibit a supplier of public telecommunications services from entering into an agreement to provide roaming services, including an agreement to provide roaming services to devices that is not limited to a transient presence in a Party's territory.

Number Portability

6. Each Party shall ensure that a supplier of public telecommunications services in its territory provides number portability without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions. (4)

Dialing Parity

7. Each Party shall ensure that a supplier of public telecommunications services in its territory provides dialing parity within the same category of service to suppliers of public telecommunications services of another Party. (5)

Access to Numbers

8. Each Party shall ensure that a supplier of public telecommunications services of another Party established in its territory is afforded access to telephone numbers on a non-discriminatory basis.

(4) With respect to Mexico, this obligation shall apply only to end-users switching suppliers within the same category of service until such time as Mexico determines, pursuant to periodic review, that it is economically and technically feasible to implement number portability without that restriction. With respect to the United States and Canada, this obligation is limited to the ability of end-users to retain at the same location the same telephone numbers, until such time as the Party determines, pursuant to periodic review, that it is economically and technically feasible to implement number portability without that restriction in its territory.

(5) For greater certainty, this paragraph shall not be construed to apply to pre-subscribed long distance service.

Article 18.5. Treatment by Major Suppliers of Public Telecommunications Services

Each Party shall ensure that a major supplier in its territory accords a supplier of public telecommunications services of another Party treatment no less favorable than that major supplier accords in like circumstances to itself, its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 18.6. Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices. (6)

2. The anti-competitive practices referred to in paragraph 1 include in particular:

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

(6) Mexico reaffirms the principles underlying the Decree amending and supplementing certain provisions of the Articles 6, 7, 27, 28, 73, 78, 94 and 105 of Mexico's Constitution (Constitución Política de los Estados Unidos Mexicanos), in telecommunications, Diario Oficial de la Federación, June 11, 2013 and, as set out therein, shall impose on a major supplier the necessary measures to prevent impairment of competition. For Mexico, any changes to the measures concerning the rates, terms, and conditions of access to and use of the networks, facilities, and services of a major supplier shall be consistent with the objective of advancing effective competition and preventing monopolistic practices and shall not impair the conditions of competition in the corresponding market.

Article 18.7. Resale (7)

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services.

(7) For the purposes of this Article, a supplier of mobile services in a Party's territory is not a major supplier unless a Party determines that the supplier meets the definition of "major supplier" set out in Article 18.1 (Definitions).

Article 18.8. Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body with the authority to require a major supplier in its territory to offer public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services. A Party may determine, in accordance with its laws and regulations, the network elements required to be made available in its territory, and the suppliers that may obtain those elements.

Article 18.9. Interconnection with Major Suppliers

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(c) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not have to pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points made generally available to users, subject to charges that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of another Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

(a) areference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(b) the terms and conditions of an interconnection agreement in effect.

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of another Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

Public Availability of Interconnection Offers and Agreements

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall provide means for suppliers of another Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring the public availability of:

(a) tates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body;

(b) interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory; and

(c) any reference interconnection offer.

Article 18.10. Provisioning and Pricing of Leased Circuits Services

1. Each Party shall ensure that a major supplier in its territory provides service suppliers of another Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

2. Further to paragraph 1, each Party shall provide its telecommunications regulatory body with the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service

suppliers of another Party at capacity-based, cost-oriented prices.

Article 18.11. Co-Location (8)

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of another Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution, such as virtual co-location or some other arrangement that facilitates interconnection or access to unbundled network elements, based on a generally available offer, on a timely basis, and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2. If a Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

4. Even if a Party does not require that a major supplier offer co-location at certain premises, it shall allow a service supplier to request that those premises be offered for co-location consistent with paragraph 1, without prejudice to the Party's decision on that request.

(8) For the purposes of this Article, a supplier of mobile services in a Party's territory is not a major supplier unless a Party determines that the supplier meets the definition of "major supplier" set out in Article 18.1 (Definitions).

Article 18.12. Access to Poles, Ducts, Conduits, and Rights-of-Way (9)

Each Party shall ensure that a major supplier in its territory provides access, subject to technical feasibility, to poles, ducts, conduits, rights-of-way, and any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in the Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory, and transparent.

(9) For the purposes of this Article, a supplier of mobile services in a Party's territory is not a major supplier unless a Party determines that the supplier meets the definition of "major supplier" set out in Article 18.1 (Definitions).

Article 18.13. Submarine Cable Systems

Each Party shall ensure that a major supplier that controls international submarine cable landing stations in the Party's territory for which there are no economically or technically feasible alternatives provides access to those landing stations consistent with Article 18.9 (Interconnection with Major Suppliers), Article 18.10 (Provisioning and Pricing of Leased Circuits Services), and Article 18.11 (Co-Location), to public telecommunications suppliers of another Party. (10)

(10) Mexico, based on its evaluation of the state of competition of the Mexican submarine cable systems market, has not applied major supplier-related measures to submarine cable landing stations pursuant to this Article.

Article 18.14. Conditions for the Supply of Value-Added Services (11)

1. The Parties recognize the importance of value-added services to innovation, competition, and consumer welfare. If a Party engages in direct regulation of value-added services, it should not impose on a supplier of value-added services requirements applicable to a supplier of public telecommunications services without due consideration of the legitimate public policy objectives, the technical feasibility of the requirements, and the characteristics of the value-added services at issue.

2. Further to paragraph 1, each Party shall:

(a) ensure that:

(i) any licensing, permit, registration, or notification procedure that it adopts or maintains relating to the supply of value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously, and

Gi) information required under that procedure is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations, and

(b) not require an enterprise in its territory that supplies value-added services to:

(i) supply those services to the public generally,

(ii) cost-justify its rates for those services,

(iii) file a tariff for those services,

(iv) connect its networks with a particular customer or network for the supply of those services or

(v) conform with a particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

3. Notwithstanding paragraphs 2(a)(ii) and 2(b), a Party may take the actions described in paragraphs 2(a)(ii) and 2(b) to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive under its law, or to otherwise promote competition or safeguard the interests of consumers.

(11) For greater certainty, this Article should not be understood to reflect a Party's view on whether a service should be categorized as a value-added service or a public telecommunications service.

Article 18.15. Flexibility In the Choice of Technology

1. No Party shall prevent a supplier of public telecommunications services from choosing the technologies it wishes to use to supply its services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted, or applied in a manner that creates an unnecessary obstacle to trade.

2. For greater certainty, if a Party adopts a measure restricting choice referred to in paragraph 1, it shall do so consistent with Article 18.24 (Transparency).

Article 18.16. Approaches to Regulation

1. The Parties recognize the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognize that regulatory needs and approaches differ by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognize that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has arisen in the market;

(b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities; (12) or

(c) use other appropriate means that benefit the long-term interest of end-users.

3. If a Party engages in direct regulation, it may nonetheless forbear, to the extent provided for in its law, from applying that regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of the regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

(12) Consistent with this subparagraph, the United States, based on its evaluation of the state of competition of the U.S. commercial mobile market, has not applied major supplier-related measures pursuant to Article 18.5 (Treatment by Major Suppliers of Public Telecommunications Services), Article 18.7 (Resale), Article 18.9 (Interconnection with Major Suppliers), Article 18.11 (Co-Location), or Article 18.12 (Access to Poles, Ducts, Conduits, and Rights-of Way) to the commercial mobile market.

Article 18.17. Telecommunications Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, a supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest (13) or maintain an operating or management role in a supplier of public telecommunications services. (14)

2. Each Party shall ensure that its regulatory decisions and procedures, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for commercial telecommunications services, are impartial with respect to market participants.

3. Each Party shall ensure that its telecommunications regulatory body has the authority to impose requirements on a major supplier that are additional to or different from requirements imposed on other suppliers in the telecommunications sector.

(13) For greater certainty, this paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

(14) For Mexico, the telecommunications regulatory body is autonomous from the Executive Branch of government, is independent regarding its decisions and functioning, and has the purpose of regulating and promoting competition and efficient development of telecommunications, as set out in existing Mexican law.

Article 18.18. State Enterprises

No Party shall accord more favorable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favorable treatment is owned or controlled by the central level of government of the Party.

Article 18.19. Universal Services

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 18.20. Licensing Process

1. If a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

(a) applicable licensing criteria and procedures;

(b) the period that it normally requires to reach a decision concerning an application for a license; and

(c) the terms and conditions of licenses in effect.

2. Each Party shall ensure that, on request, an applicant or licensee receives the reasons for the:

(a) denial of a license;

(b) imposition of supplier-specific conditions on a license;

(c) revocation of a license; or

(d) tefusal to renew a license.

Article 18.21. Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of frequency bands allocated and assigned to specific suppliers but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.

3. For greater certainty, a measure of a Party that allocates or assigns spectrum or manages frequency is not in itself inconsistent with Article 15.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 15.2 (Scope) to an investor or covered investment of another Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavor to rely on an open and transparent process that considers the public interest, including the promotion of competition.

5. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party may use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

Article 18.22. Enforcement

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Article 18.3 (Access and Use), Article 18.4. (Obligations Relating to Suppliers of Public Telecommunications Services), Article 18.5 (Treatment by Major Suppliers of Public Telecommunications Services), Article 18.6 (Competitive Safeguards), Article 18.7 (Resale), Article 18.8 (Unbundling of Network Elements), Article 18.9 (Interconnection with Major Suppliers), Article 18.10 (Provisioning and Pricing of Leased Circuits Services), Article 18.11 (Co-Location), Article 18.12 (Access to Poles, Ducts, Conduits, and Rights-of-Way) and Article 18.13 (Submarine Cable Systems). That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses.

Article 18.23. Resolution of Disputes

1, Further to Article 29.3 (Administrative Proceedings) and Article 29.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) enterprises have recourse to the telecommunications regulatory body of the Party to resolve disputes with a supplier of public telecommunications services regarding the Party's measures relating to matters set out in Article 18.3 (Access and Use), Article 18.4 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 18.5 (Treatment by Major Suppliers of Public Telecommunications Services), Article 18.6 (Competitive Safeguards), Article 18.7 (Resale), Article 18.8 (Unbundling of Network Elements), Article 18.9 (Interconnection with Major Suppliers), Article 18.10 (Provisioning and Pricing of Leased Circuits Services), Article 18.11 (Co-Location), Article 18.12 (Access to Poles, Ducts, Conduits, and Rights-of-Way), and Article 18.13 (Submarine Cable Systems);

(b) if the telecommunications regulatory body declines to initiate action on a request to resolve a dispute, it shall, on request, provide a written explanation for its decision within a reasonable period of time; (15)

(c) a supplier of public telecommunications services of another Party that has requested interconnection with a major supplier in the Party's territory has, within a reasonable and publicly specified period of time after the supplier requests interconnection, recourse to its telecommunications regulatory body to resolve disputes regarding the appropriate terms, conditions and rates for interconnection with that major supplier; and

Reconsideration (16)

(d) an enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the body to reconsider that determination or decision. No Party shall permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the regulatory body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which reconsideration is available, in accordance with its laws and regulations.

Judicial Review

2. No Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

(15) For the United States, this subparagraph applies only to the national regulatory body.

(16) This subparagraph does not apply to Mexico. For Mexico, the general rules, acts or omissions of the Federal Telecommunications Institute may only be challenged through an indirect amparo trial before federal courts specialized in competition, broadcasting, and telecommunications and shall not be subject to injunction (suspension).

Article 18.24. Transparency

1, Further to Article 29.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input (17) for a proposal for a regulation, that body:

(a) makes the proposal public or otherwise available to any interested persons; (b) includes an explanation of the purpose of and reasons for the proposal;

(c) provides interested persons with adequate public notice of the ability to comment and reasonable opportunity for comment;

(d) to the extent practicable, makes publicly available all relevant comments filed with it; and

(e) responds to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation. (18)

2. Further to Article 29.2 (Publication), each Party shall ensure that its measures relating to public telecommunications services are publicly available, including:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network;

(d) licensing, permit, registration, or notification requirements, if any;

(e) general procedures relating to resolution of telecommunications disputes provided for in Article 18.23 (Resolution of Disputes); and

(f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending, and adopting standards-related measures affecting access and use.

(17) For greater certainty, seeking input does not include internal governmental deliberations.

(18) For greater certainty, a Party may consolidate its responses to the comments received from interested persons.

Article 18.25. International Roaming Services

1. The Parties shall endeavor to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

2. A 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 consumers; and

(b) minimizing impediments to the use of technological alternatives to roaming, whereby consumers can access telecommunications services using the device of their choice when visiting the territory of a Party from the territory of another Party.

Article 18.26. Relation to other Chapters

If there is an inconsistency between this Chapter and another Chapter of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

Article 18.27. Telecommunications Committee

1. The Parties hereby establish a Telecommunications Committee composed of government representatives of each Party.

2. The Telecommunications Committee shall:

(a) review and monitor the implementation and operation of this Chapter, with a view to ensuring the effective implementation of the Chapter by enabling responsiveness to technological and regulatory developments in telecommunications to ensure the continuing relevance of this Chapter to Parties, service suppliers and end-users;

(b) discuss issues related to this Chapter and any other issues relevant to the telecommunications sector the Parties may decide;

(c) report to the Commission on the findings and the outcomes of its discussions; and (d) carry out other functions delegated to it by the Commission.

3. The Telecommunications Committee shall meet at venues and times as the Parties may decide.

4. The Parties may decide to invite representatives of relevant entities other than the Parties, including representatives of private sector entities, having the necessary expertise relevant to the issues to be discussed, to attend meetings of the Telecommunications Committee.

Chapter 19. DIGITAL TRADE

Article 19.1. Definitions

For the purposes of this Chapter:

Algorithm means a defined sequence of steps, taken to solve a problem or obtain a result;

computing facility means a computer server or storage device for processing or storing information for commercial use;

covered person means:

(a) a covered investment as defined in Article 1.5 (General Definitions);

(b) an investor of a Party as defined in Article 14.1 (Definitions); or

(c) a service supplier of a Party as defined in Article 15.1 (Definitions), but does not include a covered person as defined in Article 17.1 (Definitions);

digital product means a computer program, text, video, image, sound recording, or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically. For greater certainty, digital product does not include a digitized representation of a financial instrument, including money; (1)

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

electronic signature means data in electronic form that is in, affixed to, or logically associated with, an electronic document or message, and that may be used to identify the signatory in relation to the electronic document or message and indicate the signatory's approval of the information contained in the electronic document or message;

government information means non-proprietary information, including data, held by the central government;

information content provider means a person or entity that creates or develops, in whole or in part, information provided through the Internet or another interactive computer service;

interactive computer service means a system or service that provides or enables electronic access by multiple users to a computer server;

personal information means information, including data, about an identified or identifiable natural person;

trade administration document means a form issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic communication means an electronic message, which is sent to an electronic address of a person for commercial or marketing purposes without the consent of the recipient or despite the explicit rejection of the recipient. (2)

(1) This definition should not be understood to reflect a Party's view that digital products are a good or are a service.

(2) For the United States, an unsolicited commercial electronic communication does not include an electronic message sent primarily for purposes other than commercial or marketing purposes.

Article 19.2. Scope and General Provisions

1. The Parties recognize the economic growth and opportunities provided by digital trade and the importance of frameworks that promote consumer confidence in digital trade and of avoiding unnecessary barriers to its use and development.

2. This Chapter applies to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter does not apply:

(a) to government procurement; or

(b) except for Article 19.18 (Open Government Data), to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

4. For greater certainty, a measure that affects the supply of a service delivered or performed electronically is subject to Chapter 14 (Investment), Chapter 15 (Cross-Border Trade in Services), and Chapter 17 (Financial Services), including any exception or non-conforming measure set out in this Agreement that is applicable to the obligations contained in those Chapters.

Article 19.3. Customs Duties

1. No Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products transmitted electronically, between a person of one Party and a person of another Party.

2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees, or other charges on a digital product transmitted electronically, provided that those taxes, fees, or charges are imposed in a manner consistent with this Agreement.

Article 19.4. Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital

products. (3)

2. This Article does not apply to a subsidy or grant provided by a Party, including a government-supported loan, guarantee, or insurance.

(3) For greater certainty, to the extent that a digital product of a non-Party is a "like digital product," it will qualify as an "other like digital product" for the purposes of Article 19.4.1 (Non-Discriminatory Treatment of Digital Products).

Article 19.5. Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996.

2. Each Party shall endeavor to:

(a) avoid unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

Article 19.6. Electronic Authentication and Electronic Signatures

1. Except in circumstances provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party shall adopt or maintain measures for electronic authentication and electronic signatures that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods or electronic signatures for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication or electronic signatures.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the electronic signature or method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. Each Party shall encourage the use of interoperable electronic authentication.

Article 19.7. Online Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent or deceptive commercial activities as referred to in Article 21.4.2 (Consumer Protection) when they engage in digital trade.

2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

3. The Parties recognize the importance of, and public interest in, cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border digital trade in order to enhance consumer welfare. To this end, the Parties affirm that cooperation under paragraphs 21.4.3 through 21.4.5 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 19.8. Personal Information Protection

1. The Parties recognize the economic and social benefits of protecting the personal information of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade. In the development of this legal framework, each Party should take into account principles and guidelines of relevant international bodies, (4) such as the APEC Privacy Framework and the OECD

Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013).

3. The Parties recognize that pursuant to paragraph 2, key principles include: limitation on collection; choice; data quality; purpose specification; use limitation; security safeguards; transparency; individual participation; and accountability. The Parties also recognize the importance of ensuring compliance with measures to protect personal information and ensuring that any restrictions on cross-border flows of personal information are necessary and proportionate to the risks presented.

4. Each Party shall endeavor to adopt non-discriminatory practices in protecting users of digital trade from personal information protection violations occurring within its jurisdiction.

5. Each Party shall publish information on the personal information protections it provides to users of digital trade, including how:

(a) a natural person can pursue a remedy; and

(b) an enterprise can comply with legal requirements. 6. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. The Parties shall endeavor to exchange information on the mechanisms applied in their jurisdictions and explore ways to extend these or other suitable atrangements to promote compatibility between them. The Parties recognize that the APEC Cross-Border Privacy Rules system is a valid mechanism to facilitate cross-border information transfers while protecting personal information.

(4) For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

Article 19.9. Paperless Trading

Each Party shall endeavor to accept a trade administration document submitted electronically as the legal equivalent of the paper version of that document.

Article 19.10. Principles on Access to and Use of the Internet for Digital Trade

The Parties recognize that it is beneficial for consumers in their territories to be able to:

(a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;

(b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and

(c) access information on the network management practices of a consumer's Internet access service supplier.

Article 19.11. Cross-Border Transfer of Information by Electronic Means

1. No Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business of a covered person.

2. This Article does not prevent a Party from adopting or maintaining a measure inconsistent with paragraph 1 that is necessary to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information greater than are necessary to achieve the objective. (5)

(5) A measure does not meet the conditions of this paragraph if it accords different treatment to data transfers solely on the basis that they are cross-border in a manner that modifies the conditions of competition to the detriment of service suppliers of another Party.

Article 19.12. Location of Computing Facilities

No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

Article 19.13. Unsolicited Commercial Electronic Communications

1. Each Party shall adopt or maintain measures providing for the limitation of unsolicited commercial electronic communications.

2. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic communications sent to an electronic mail address that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or

(b) require the consent, as specified in the laws and regulations of each Party, of recipients to receive commercial electronic messages.

3. Each Party shall endeavor to adopt or maintain measures that enable consumers to reduce or prevent unsolicited commercial electronic communications sent other than to an electronic mail address.

4. Each Party shall provide recourse in its law against suppliers of unsolicited commercial electronic communications that do not comply with a measure adopted or maintained pursuant to paragraph 2 or 3.

5. The Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic communications.

Article 19.14. Cooperation

1. Recognizing the global nature of digital trade, the Parties shall endeavor to:

(a) exchange information and share experiences on regulations, policies, enforcement and compliance relating to digital trade, including:

(i) personal information protection, particularly with a view to strengthening existing international mechanisms for cooperation in enforcing laws protecting privacy,

(ii) security in electronic communications,

(iii) authentication, and

(iv) government use of digital tools and technologies to achieve better government performance;

(b) cooperate and maintain a dialogue on the promotion and development of mechanisms, including the APEC Cross-Border Privacy Rules, that further global interoperability of privacy regimes;

(c) actively participate in regional and multilateral fora to promote the development of digital trade;

(d) encourage development by the private sector of methods of self-regulation that foster digital trade, including codes of conduct, model contracts, guidelines, and enforcement mechanisms;

(e) promote access for persons with disabilities to information and communications technologies; and

3) promote, through international cross-border cooperation initiatives, the development of mechanisms to assist users in submitting cross-border complaints regarding personal information protection.

2. The Parties shall consider establishing a forum to address any of the issues listed above, or any other matter pertaining to the operation of this Chapter.

Article 19.15. Cybersecurity

1. The Parties recognize that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties shall endeavor to:

(a) build the capabilities of their respective national entities responsible for cybersecurity incident response; and

(b) strengthen existing collaboration mechanisms for cooperating to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices.

2. Given the evolving nature of cybersecurity threats, the Parties recognize that risk-based approaches may be more effective than prescriptive regulation in addressing those threats. Accordingly, each Party shall endeavor to employ, and encourage enterprises within its jurisdiction to use, risk-based approaches that rely on consensus-based standards and risk management best ptactices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

Article 19.16. Source Code

1. No Party shall require the transfer of, or access to, a source code of software owned by a person of another Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software, or of products containing that software, in its territory.

2. This Article does not preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding, (6) subject to safeguards against unauthorized disclosure.

(6) This disclosure shall not be construed to negatively affect the software source code's status as a trade secret, if such status is claimed by the trade secret owner.

Article 19.17. Interactive Computer Services

1. The Parties recognize the importance of the promotion of interactive computer services, including for small and medium-sized enterprises, as vital to the growth of digital trade.

2. To that end, other than as provided in paragraph 4, no Party shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information. (7)

3. No Party shall impose liability on a supplier or user of an interactive computer service on account of:

(a) any action voluntarily taken in good faith by the supplier or user to restrict access to or availability of material that is accessible or available through its supply or use of the interactive computer services and that the supplier or user considers to be harmful or objectionable; or

(b) any action taken to enable or make available the technical means that enable an information content provider or other persons to restrict access to material that it considers to be harmful or objectionable.

4. Nothing in this Article shall:

(a) apply to any measure of a Party pertaining to intellectual property, including measures addressing liability for intellectual property infringement; or

(b) be construed to enlarge or diminish a Party's ability to protect or enforce an intellectual property right; or

(c) be construed to prevent:

(i) a Party from enforcing any criminal law, or

(ii) a supplier or user of an interactive computer service from complying with a specific, lawful order of a law enforcement authority. (8)

5. This Article is subject to Annex 19-A.

(7) For greater certainty, a Party may comply with this Article through its laws, regulations, or application of existing legal doctrines as applied

through judicial decisions.

(8) The Parties understand that measures referenced in paragraph 4(c)(ii) shall be not inconsistent with paragraph 2 in situations where paragraph 2 is applicable.

Article 19.18. Open Government Data

1. The Parties recognize that facilitating public access to and use of government information fosters economic and social development, competitiveness, and innovation.

2. To the extent that a Party chooses to make government information, including data, available to the public, it shall endeavor to ensure that the information is in a machine-readable and open format and can be searched, retrieved, used, reused, and redistributed.

3. The Parties shall endeavor to cooperate to identify ways in which each Party can expand access to and use of government information, including data, that the Party has made public, with a view to enhancing and generating business opportunities, especially for SMEs.

ANNEX 19-A.

1. Article 19.17 (interactive Computer Services) shall not apply with respect to Mexico until the date of three years after entry into force of this Agreement.

2. The Parties understand that Articles 145 and 146 of Mexico'sLey Federal de Telecomunicaciones y Radiodifusión, as in force on the date of entry into force of this Agreement, are not inconsistent with Article 19.17.3 (Interactive Computer Services). In a dispute with respect to this article, subordinate measures adopted or maintained under the authority of and consistent with Articles 145 and 146 of Mexico's Ley Federal de Telecomunicaciones y Radiodifusión shall be presumed to be not inconsistent with Article 19.17.3 (Interactive Computer Services).

3. The Parties understand that Mexico will comply with the obligations in Article 19.17.3 (Interactive Computer Services) in a manner that is both effective and consistent with Mexico's Constitution (Constitución Política de los Estados Unidos Mexicanos), specifically Articles 6 and 7.

4. For greater certainty, Article 19.17 (Interactive Computer Services) is subject to Article 32.1 (General Exceptions), which, among other things, provides that, for purposes of Chapter 19, the exception for measures necessary to protect public morals pursuant to paragraph (a) of Article XIV of GATS is incorporated into and made part of this Agreement, mutatis mutandis. The Parties agree that measures necessary to protect against online sex trafficking, sexual exploitation of children, and prostitution, such as Public Law 115-164, the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017," which amends the Communications Act of 1934, and any relevant provisions of Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos delitos, are measures necessary to protect public morals.

Chapter 20. INTELLECTUAL PROPERTY RIGHTS

Section A. General Provisions

Article 20.1. Definitions

1. For the purposes of this Chapter:

Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on September 9, 1886, as revised at Paris on July 24, 1971;

Brussels Convention means the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, done at Brussels on May 21, 1974;

Budapest Treaty means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), done at Budapest on April 28, 1977, as amended on September 26, 1980;

Declaration on TRIPS and Public Health means the Declaration on the TRIPS Agreement and Public Health

(WT/MIN(O1)/DEC/2), adopted on November 14, 2001;

geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin;

Hague Agreement means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva on July 2, 1999;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

Madrid Protocol means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid on June 27, 1989;

Paris Convention means the Paris Convention for the Protection of Industrial Property, done at Paris on March 20, 1883 as revised at Stockholm on July 14, 1967;

performance means a performance fixed in a phonogram, unless otherwise specified; with respect to copyright and related rights, right to authorize or prohibit refers to exclusive rights;

PLT means the Patent Law Treaty adopted by the WIPO Diplomatic Conference done at Geneva on June 1, 2000;

Singapore Treaty means the Singapore Treaty on the Law of Trademarks, done at Singapore on March 27, 2006;

UPOV 1991 means the International Convention for the Protection of New Varieties of Plants, done at Paris on December 2, 1961, as revised at Geneva on March 19, 1991;

WCT means the WIPO Copyright Treaty, done at Geneva on December 20, 1996; WIPO means the World Intellectual Property Organization;

for greater certainty, work includes a cinematographic work, photographic work, and computer program; and

WPPT means the WIPO Performances and Phonograms Treaty, done at Geneva on December 20, 1996.

2. For the purposes of Article 20.8 (National Treatment), Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), and Article 20.61 (Related Rights):

a national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 20.7 (International Agreements) or the TRIPS Agreement.

Article 20.2. Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 20.3. Principles

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that those measures are consistent with the provisions of this Chapter.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to ptactices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 20.4. Understandings In Respect of this Chapter

Having regard to the underlying public policy objectives of national systems, the Parties recognize the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture, and the arts; and

(c) foster competition and open and efficient markets;

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the public.

Article 20.5. Nature and Scope of Obligations

1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 20.6. Understandings Regarding Certain Public Health Measures

The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the Amendment of the TRIPS Agreement, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1,WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if any waiver of a provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

Article 20.7. International Agreements

1. Each Party affirms that it has ratified or acceded to the following agreements:

(a) Patent Cooperation Treaty, as amended on September 28, 1979, and modified on February 3, 1984;

(b) Paris Convention;

(c) Berne Convention;

(d) WCT; and

(e) WPPT.

2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement:

(a) Madrid Protocol;

(b) Budapest Treaty;

(c) Singapore Treaty; (1)

(d) UPOV 1991;

(e) Hague Agreement; and

(f) Brussels Convention.

3. Each Party shall give due consideration to ratifying or acceding to the PLT, or, in the alternative, shall adopt or maintain procedural standards consistent with the objective of the PLT.

(1) A Party may satisfy the obligations in paragraphs 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.

Article 20.8. National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of another Party treatment no less favorable than it accords to its own nationals with regard to the protection (2) of intellectual property rights.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that this derogation is:

(a) necessary to secure compliance with laws or regulations 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.

(2) For the purposes of this paragraph, "protection" shall include 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 covered by this Chapter. Further, for the purposes of this paragraph, "protection" also includes the prohibition on the circumvention of effective technological measures set out in Article 20.66 (Technological Protection Measures) and the provisions concerning rights management information set out in Article 20.67 (Rights Management Information). For greater certainty, "matters affecting the use of intellectual property rights specifically covered by this Chapter" in respect of works, performances, and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter. The preceding sentence is without prejudice to a Party's interpretation of "matters affecting the use of intellectual property rights" in footnote 3 of the TRIPS Agreement.

Article 20.9. Transparency

1. Further to Article 20.80 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavor to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavor to publish online information that it makes public concerning applications for trademarks, geographical indications, designs, patents, and plant variety rights. (3) (4)

3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights. (5)

(3) For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 20.23 (Electronic Trademarks System).

(4) For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.

(5) For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

Article 20.10. Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, including in Article 20.63 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives tise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Unless provided in Article 20.63 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article 20.11. Exhaustion of Intellectual Property Rights

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. (6)

(6) For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

Section B. Cooperation

Article 20.12. Contact Points for Cooperation

Each Party may designate and notify the other Parties of one or more contact points for the purpose of cooperation under this Section.

Article 20.13. Cooperation

The Parties shall endeavor to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination and exchange of information between their respective intellectual property offices, or other agencies or institutions, as determined by each Party.

Article 20.14. Committee on Intellectual Property Rights

1. The Parties hereby establish a Committee on Intellectual Property Rights (IPR Committee), composed of government representatives of each Party.

2. The IPR Committee shall:

(a) exchange information, pertaining to intellectual property rights matters, including how intellectual property protection contributes to innovation, creativity, economic growth, and employment, such as:

(i) developments in domestic and international intellectual property law and policy,

(ii) economic benefits related to trade and other analysis of the contributions arising from the protection and enforcement of intellectual property rights,

(iii) intellectual property issues particularly relevant to small and medium-sized enterprises; science, technology, and innovation activities; and to the generation, transfer, and dissemination of technology,

(iv) approaches for reducing the infringement of intellectual property rights, as well as effective strategies for removing the underlying incentives for infringement,

(v) programs on education and awareness related to intellectual property and building capacity regarding intellectual property rights matters, and

(vi) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO;

(b) work towards strengthening border enforcement of intellectual property rights through the promotion of collaborative operations in customs and exchange of best practices;

(c) exchange information regarding trade secret-related matters, including the value of trade secrets and the economic loss associated with trade secret misappropriation;

(d) discuss proposals to enhance procedural fairness in patent litigation, including with respect to choice of venue; and

(e) upon request of a Party and in the interest of advancing transparency, endeavor to reach a mutually agreeable solution before taking measures in connection with future requests of recognition or protection of a geographical indication from any other country through a trade agreement.

3. The Parties shall endeavor to cooperate on providing technical assistance regarding trade secret protection to the relevant authorities of non-Parties and identify appropriate opportunities to increase cooperation between the Parties on trade-related intellectual property rights protection and enforcement.

4. The IPR Committee shall meet within one year after the date of entry into force of this Agreement and thereafter as necessary.

Article 20.15. Patent Cooperation and Work Sharing

1. The Parties recognize the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices to the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavor to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:

(a) making search and examination results available to the patent offices of the other Parties; (7) and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavor to cooperate to reduce differences in the procedures and processes of their respective patent offices.

(7) The Parties recognize the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices

Article 20.16. Cooperation on Request

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon between the Parties involved. The Parties affirm that cooperation under this Section is additional to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, between the Parties, including between their respective intellectual property offices.

Section C. Trademarks

Article 20.17. Types of Signs Registrable as Trademarks

No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article 20.18. Collective and Certification Marks

Each Party shall provide that trademarks include collective marks and certification marks. A Party is not required to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party shall also provide

that signs that may serve as geographical indications are capable of protection under its trademark system. (8)

(8) Consistent with the definition of a geographical indication in Article 20.1 (Definitions), any sign, or combination of signs, shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of those means.

Article 20.19. Use of Identical or Similar Signs

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 identical or similar signs, including subsequent geographical indications (9) for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, if that use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(9) For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

Article 20.20. Exceptions

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 20.21. Well-Known Trademarks

1. No Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well- known trademarks, or given prior recognition as a well-known trademark.

2. Article 6bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (10) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by that use.

3. The Parties recognize the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as 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 September 20 to 29, 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, (11) for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide those measures including in cases in which the subsequent trademark is likely to deceive.

(10) In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

(11) The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of, or use of the first-mentioned trademark.

Article 20.22. Procedural Aspects of Examination, Opposition, and Cancellation

Each Party shall provide a system for the examination and registration of trademarks that includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest

any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;

(c) providing an opportunity to oppose the registration of a trademark and an opportunity to seek cancellation (12) of a trademark through, at a minimum, administrative procedures; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

(12) For greater certainty, cancellation for the purposes of this Section may be implemented through a nullification or revocation proceeding.

Article 20.23. Electronic Trademarks System

Further to Article 20.9.3 (Transparency), each Party shall provide a:

(a) system for the electronic application for, and maintenance of, trademarks; and

(b) publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

Article 20.24. Classification of Goods and Services

Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:

(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification; (13) and

(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

(13) A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

Article 20.25. Term of Protection for Trademarks

Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.

Article 20.26. Non-Recordal of a License

No Party shall require recordal of trademark licenses:

(a) to establish the validity of the licenses; or

(b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance, or enforcement of trademarks.

Article 20.27. Domain Names

1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:

(a) an appropriate procedure for the settlement of disputes that, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, or that:

(i) is designed to resolve disputes expeditiously and at low cost,

(ii) is fair and equitable,

(iii) is not overly burdensome, and

(iv) does not preclude resort to judicial proceedings; and

(b) online public access to a reliable and accurate database of contact information concerning domain name registrants,

in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies (14) shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

(14) The Parties understand that those remedies may, but need not, include revocation, cancellation, transfer, damages, or injunctive relief.

Section D. Country Names

Article 20.28. Country Names

Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E. Geographical Indications

Article 20.29. Recognition of Geographical Indications

The Parties recognize that geographical indications may be protected through a trademark or a sui generis system or other legal means.

Article 20.30. Administrative Procedures for the Protection or Recognition of Geographical Indications

If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a sui generis system, with respect to applications for that protection or petitions for that recognition, that Party shall:

(a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals; (15)

(b) process those applications or petitions without imposing overly burdensome formalities;

(c) ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;

(d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;

(e) require that applications or petitions may specify particular translation or transliteration for which protection is being sought;

(f) examine applications or petitions;

(g) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions;

(h) provide a reasonable period of time during which an interested person may oppose the application or petition;

(i) require that administrative decisions in opposition proceedings be reasoned and in writing, which may be provided by electronic means;

(j) require that administrative decisions in cancellation proceedings be reasoned and in writing, which may be provided by electronic means; and

(k) provide for cancellation (16) of the protection or recognition afforded to a geographical indication.

(15) This subparagraph also applies to judicial procedures that protect or recognize a geographical indication.

(16) For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.

Article 20.31. Grounds of Denial, Opposition, and Cancellation (17)

1. If a Party protects or recognizes a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for that protection or recognition to be refused or otherwise not afforded, at least, on the grounds that the geographical indication is:

(a) likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;

(b) likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and

(c) a term customary in common language as the common name (18) (19) (20) for the relevant good in the territory of the Party.

2. If a Party has protected or recognized a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party. (21)

3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognized term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.

4. If a Party has in place a sui generis system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any circumstance identified in paragraph 1 has been established. (22) That Party shall also provide a process that allows interested persons to commence a proceeding on the grounds identified in paragraph 1.

5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.

(17) A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.

(18) If a Party refuses to protect or recognize a compound geographical indication on the grounds that an individual term of that geographical indication is the common name for the relevant good in the territory of a Party, the Party may withdraw its refusal of protection or recognition if the applicant or registrant agrees to disclaim any claim of exclusive rights to the particular individual term that was the basis for the refusal.

(19) For greater certainty, if a Party provides for the procedures in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, that Party is not required to protect or recognize a geographical indication of any other Party with respect to products

of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.

(20) For greater certainty, a term customary in common language as the common name may refer to a single-component term or individual components of a multi-component term.

(21) For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraphs 2 or 4 of this Article in relation to that geographical indication.

(22) As an alternative to this paragraph, if a Party has in place a sui generis system of the type referred to in this paragraph as of the applicable date under Article 20.35.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in paragraph 1(c) have been established.

Article 20.32. Guidelines for Determining Whether a Term Is the Term Customary In the Common Language

With respect to the procedures in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31 (Grounds of Denial, Opposition, and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that 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 that consumer understanding may include:

(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers, and relevant websites;

(b) how the good referenced by the term is marketed and used in trade in the territory of that Party;

(c) whether the term is used, as appropriate, in relevant international standards recognized by the Parties to refer to a type or class of good in the territory of the Party, such as pursuant to a standard promulgated by the Codex Alimentarius; and

(d) whether the good in question is imported into the Party's territory, in significant quantities, (23) from a place other than the territory identified in the application or petition, and whether those imported goods are named by the term.

(23) In determining whether the good in question is imported in significant quantities, a Party may consider the amount of importation at the time of the application or petition.

Article 20.33. Multi-Component Terms

With respect to the procedures in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31 (Grounds of Denial, Opposition, and Cancellation), an individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.

Article 20.34. Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date (24) in the Party or the registration date in the Party, as applicable.

(24) For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention. No Party shall use the date of protection in a country of origin of a geographical indication to establish a priority date in the territory of the Party, unless filed within the Paris Convention priority period.

Article 20.35. International Agreements

1. If a Party protects or recognizes a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) (25) or Article 20.31 (Grounds of Denial, Opposition, and Cancellation), that Party at least shall apply procedures and grounds that are equivalent to those in Article 20.30(f), (g), (h), and (i) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31.1 (Grounds of Denial, Opposition, and Cancellation), as well as:

(a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognizing the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;

(b) to publish online details regarding the terms that the Party is considering protecting or recognizing through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi- component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;

(c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall allow for a meaningful opportunity for any interested person to participate in an opposition process; and

(d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.

2. In respect of international agreements referred to in paragraph 6 that permit the protection or recognition of a new geographical indication, a Party shall: (26) (27)

(a) apply paragraph 1(b) and apply at least procedures and grounds that are equivalent to those in Article 20.30(f), (g), (h), and (i) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31.1 (Grounds of Denial, Opposition, and Cancellation);

(b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before that term is protected or recognized; and

(c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.

3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.

4. For the purposes of this Article, a Party is not required to apply Article 20.31 (Grounds of Denial, Opposition, and Cancellation), or obligations equivalent to Article 20.31, to geographical indications for wines and spirits or applications for those geographical indications.

5. The protection or recognition that each Party provides pursuant to paragraph 1 shall commence no earlier than the date on which that agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of that agreement, on that later date.

6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognized pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:

(a) was concluded, or agreed in principle, (28) prior to the date of conclusion, or agreement in principle, of this Agreement;

(b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or

(c) entered into force for a Party prior to the date of entry into force of this Agreement.

(25) Each Party shall apply Article 20.32 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 20.33 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.

(26) Tn respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have

not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.

(27) A Party may comply with this Article by applying Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31 (Grounds of Denial, Opposition, and Cancellation).

(28) For the purpose of this Article, an agreement "agreed in principle" means an agreement involving another government, government entity, or international organization in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically announced.

Section F. Patents and Undisclosed Test or other Data

Subsection A. General Patents

Article 20.36. Patentable Subject Matter

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. (29)

2. A Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law. A Party may also exclude from patentability:

(a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals;

(b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.

3. A Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 2, each Party confirms that patents are available at least for inventions that are derived from plants.

(29) For the purposes of this Section, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled in the art, or having ordinary skill in the art, having regard to the prior art.

Article 20.37. Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure: (30)

(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and

(b) occurred within twelve months prior to the filing date in the territory of the Party.

(30) For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorized by, or derived from, the patent applicant.

Article 20.38. Patent Revocation

1. Each Party shall provide that a patent may be cancelled, revoked, or nullified only on grounds that would have justified a

refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for cancelling, revoking, or nullifying a patent or holding a patent unenforceable.

2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.

Article 20.39. Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that those exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 20.40. Other Use without Authorization of the Right Holder

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, and any waiver of or amendment to that Article that the Parties accept.

Article 20.41. Amendments, Corrections, and Observations

Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections, and observations in connection with its application. (31)

(31) A Party may provide that those amendments or corrections must not exceed the scope of the disclosure of the invention, as of the filing date.

Article 20.42. Publication of Patent Applications

1. Recognizing the benefits of transparency in the patent system, each Party shall endeavor to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.

2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.

3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 20.43. Information Relating to Published Patent Applications and Granted Patents

For published patent applications and granted patents, and in accordance with the Party’s requirements for prosecution of those applications and patents, each Party shall make available to the public at least the following information, to the extent that this information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

(a) search and examination results, including details of, or information related to, relevant prior art searches;

(b) as appropriate, non-confidential communications from applicants; and

(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 20.44. Patent Term Adjustment for Unreasonable Granting Authority Delays

1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.

2. A Party may provide procedures for a patent applicant to request to expedite the examination of its patent application.

3. If there are unreasonable delays in a Party's issuance of a patent, that Party shall provide the means to, and at the request of the patent owner shall, adjust the term of the patent to compensate for those delays.

4. For the purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of those delays, periods of time that do not occur during the processing (32) of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable (33) to the granting authority; as well as periods of time that are attributable to the patent applicant. (34)

(32) For the purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant.

(33) A Party may treat delays "that are not directly attributable to the granting authority" as delays that are outside the direction or control of the granting authority.

(34) Notwithstanding Article 20.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all patent applications filed after the date of entry into force of this Agreement, or the date two years after the signing of this Agreement, whichever is later.

Subsection B. Measures Relating to Agricultural Chemical Products

Article 20.45. Protection of Undisclosed Test or other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for granting marketing approval (35) for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product, (36) that Party shall not permit third persons, without the consent of the person that previously submitted that information, to market the same or a similar (37) product on the basis of that information or the marketing approval granted to the person that submitted that test or other data for at least 10 years (38) from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

3. For the purposes of this Article, a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

(35) For the purposes of this Chapter, the term "marketing approval" is synonymous with "sanitary approval" under a Party's law.

(36) Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product, or (c) both.

(37) For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

(38) For greater certainty, a Party may limit the period of protection under this Article to 10 years.

Subsection C. Measures Relating to Pharmaceutical Products

Article 20.46. Patent Term Adjustment for Unreasonable Curtailment

1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.

2. With respect to a pharmaceutical product that is subject to a patent, each Party shall make available an adjustment (39) of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.

3. 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. (40)

4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the processing of marketing approval applications.

(39) For greater certainty, a Party may alternatively make available a period of additional sui generis protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The sui generis protection must confer the rights conferred by the patent, subject to any conditions and limitations pursuant to paragraph 3.

(40) Such conditions and limitations with respect to paragraph 3 may include, among other things: (i) limiting the applicability of paragraph 2 to a single patent term adjustment for each pharmaceutical product that has been granted marketing approval; (ii) requiring the adjustment to be based on the first marketing approval granted to the pharmaceutical product in that Party; (iii) limiting the period of the adjustment to a maximum of 5 years; and (iv) if a Party makes available a period of additional sui generis protection, limiting the period of the additional sui generis protection to a maximum of 2 years.

Article 20.47. Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 20.39 (Exceptions), each Party shall adopt or maintain a regulatory review exception for pharmaceutical products that permits a third person to make, use, sell, offer to sell, or import in the territory of that Party a product covered by a subsisting patent solely for purposes related to generating information to meet requirements for marketing approval for the product.

Article 20.48. Protection of Undisclosed Test or other Data

1. (a) If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product, (41) that Party shall not permit third persons, without the consent of the person that previously submitted that information, (42) to market the same or a similar (43) product on the basis of:

(i) that information, or

(ii) the marketing approval granted to the person that submitted that information,

for at least five years (44) from the date of marketing approval of the new pharmaceutical product in the territory of the Party;

(b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of a person that previously submitted the information concerning the safety and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of that Party.

2. Each Party shallapply paragraph 1, mutatis mutandis, (46) for a period of at least five years to new pharmaceutical products that contain a chemical entity that has not been previously approved in that Party. (47)

3. Notwithstanding paragraphs 1 and 2, a Party may take measures to protect public health in accordance with:

(a) the Declaration on TRIPS and Public Health;

(b) any waiver of a provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to

implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or

(c) any amendment of the TRIPS Agreement to implement the Declaration on TRIPS and Public Health that enters into force with respect to the Parties.

(41) Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (i) only the safety of the product, (ii) only the efficacy of the product, or ii) both.

(42) For greater certainty, a Party may deem that such person has provided consent if, after that person is directly notified by a third person that an unexpired applicable patent claiming the approved product or its approved method of use is invalid or is not infringed by the product for which the third person is seeking marketing approval, an infringement action is not initiated against the third person with respect to the patent within 45 days of the notification.

(43) For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

(44) For greater certainty, a Party may limit the period of protection under paragraph 1 to five years.

(45) For greater certainty, the Parties understand that the United States may comply with the obligations in subparagraph (a) with respect to "the same or a similar product" through 21 U.S.C. §§ 355(c)(3)(E)Gi) and 355(j)(5)(F)Gi), 42 U.S.C. § 262(k)(7), and the regulations implemented at 21 C.F. R. 314.

(46) A Party that provides a period of at least eight years of protection under paragraph 1 is not required to apply paragraph 2.

(47) For the purposes of paragraph 2, a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved.

Article 20.49. Definition of New Pharmaceutical Product

For the purposes of Article 20.48.1 (Protection of Undisclosed Test or Other Data), a new pharmaceutical product means a pharmaceutical product that does not contain a chemical entity that has been previously approved in that Party.

Article 20.50. Measures Relating to the Marketing of Certain Pharmaceutical Products (48)

1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:

(a) a system to provide notice to a patent holder (49) or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;

(b) adequate time and sufficient opportunity for such a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies in subparagraph (c); and

(c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.

2. Further to paragraph 1, that Party may also provide:

(a) effective rewards for a successful assertion of the invalidity or non-infringement of the applicable patent; (50) and

(b) procedures, consistent with its obligations under this Chapter, to promote transparency by providing information regarding applicable patents and relevant periods of exclusivity for pharmaceutical products that have been approved in that Party.

(48) Annex 20-A applies to this Article.

(49) For greater certainty, for the purposes of this Article, a Party may provide that a "patent holder" includes a patent licensee or the authorized holder of marketing approval.

(50) Effective rewards may include providing a period of marketing exclusivity to the first applicant that successfully asserts the invalidity or non-infringement of the patent in accordance with the Party's marketing approval process.

Article 20.51. Alteration of Period of Protection

Subject to Article 20.48.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 20.45 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products) or Article 20.48 and is also covered by a patent in the territory of that Party, that Party shall not alter the period of protection that it provides pursuant to Article 20.45 or Article 20.48 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 20.45 or Article 20.48.

Section G. Industrial Designs

Article 20.52. Protection

1. Each Party shall ensure adequate and effective protection of industrial designs consistent with Articles 25 and 26 of the TRIPS Agreement.

2. Consistent with paragraph 1, each Party confirms that protection is available for designs embodied in a part of an article.

Article 20.53. Non-Prejudicial Disclosures/Grace Period (51)

Each Party shall disregard at least information contained in public disclosures used to determine if an industrial design is new, original, or, where applicable, non-obvious, if the public disclosure: (52)

(a) was made by the design applicant or by a person that obtained the information directly or indirectly from the design applicant; and

(b) occurred within 12 months prior to the filing date in the territory of the Party.

(51) Articles 20.53 (Non-Prejudicial Disclosures/Grace Period) and 20.54 (Electronic Industrial Design System) apply with respect to industrial design patent systems or industrial design registration systems.

(52) For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the creator or co-creator and provide that, for the purposes of this Article, information obtained directly or indirectly from the design applicant may be information contained in the public disclosure that was authorized by, or derived from, the design applicant.

Article 20.54. Electronic Industrial Design System

Each Party shall provide a:

(a) system for the electronic application for industrial design rights; and

(b) publicly available electronic information system, which must include an online database of protected industrial designs.

Article 20.55. Term of Protection

Each Party shall provide a term of protection for industrial designs of at least 15 years from either: (a) the date of filing, or (b) the date of grant or registration.

Section H. Copyright and Related Rights

Article 20.56. Definitions

For the purposes of Article 20.57 (Right of Reproduction) and Article 20.59 (Right of Distribution) through Article 20.68 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmission over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

Article 20.57. Right of Reproduction

Each Party shall provide (53) to authors, performers, and producers of phonograms (54) the exclusive right to authorize or prohibit all reproduction of their works, performances, or phonograms in any manner or form, including in electronic form.

(53) For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances, or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance, or phonogram has been fixed in some material form.

(54) References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

Article 20.58. Right of Communication to the Public

Without prejudice to Article 11(1)(ii), Article 11bis(1)(i) and (ii), Article 11ter(1)(ii), Article 14(1)(i), and Article 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the 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 these works from a place and at a time individually chosen by them. (55)

(55) The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article

precludes a Party from applying Article 11bis(2) of the Berne Convention.

Article 20.59. Right of Distribution

Each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorize or prohibit the making available to the public of the original and copies (56) of their works, performances, and phonograms through sale or other transfer of ownership.

(56) The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Article 20.60. No Hierarchy

Each Party shall provide that, in cases in which authorization is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram, the need for the authorization of the:

(a) author does not cease to exist because the authorization of the performer or producer is also required; and

(b) performer or producer does not cease to exist because the authorization of the author is also required.

Article 20.61. Related Rights

1. Further to the protection afforded to performers and producers of phonograms as "nationals" under Article 20.8 (National Treatment), each Party shall accord the rights provided for in this Chapter to performances and phonograms first published or first fixed (57) in the territory of another Party. (58) A performance or phonogram is considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.

2. Each Party shall provide to performers the exclusive right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means (59) and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 20.64 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law. (60)

(c) Each Party may adopt limitations to this right in respect of other non-interactive transmissions in accordance with Article 20.64.1 (Limitations and Exceptions), provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

(57) For the purposes of this Article, fixation means the finalization of the master tape or its equivalent.

(58) For greater certainty, consistent with Article 20.8 (National Treatment), each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favorable than it accords to performances or phonograms first published or first fixed in its own territory.

(59) For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

(60) For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders, or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

Article 20.62. Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; (61) and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 75 years from the end of the calendar year of the first authorized publication (62) of the work, performance, or phonogram, or

(ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

(61) The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article 20.8 (National Treatment) precludes that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

(62) For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorized publication that Party may continue to calculate the term from fixation.

Article 20.63. Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to works, performances, and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

Article 20.64. Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive tights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT, or the WPPT.

Article 20.65. Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding an economic right (63) in a work, performance, or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of contract, including contracts of employment underlying the creation of works, performances, or phonograms, must be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right. (64)

(63) For greater certainty, this Article does not affect the exercise of moral rights.

(64) Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances, or phonograms shall, in the absence of a written agreement, result in a transfer of economic tights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

Article 20.66. Technological Protection Measures (65)

1. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide (66) that a person who:

(a) knowingly, or having reasonable grounds to know, (67) circumvents without authority an effective technological measure that controls access to a protected work, performance, or phonogram; (68) or

(b) manufactures, imports, distributes, offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:

(i) are promoted, advertised, or otherwise marketed by that person for the purpose of circumventing any effective technological measure,

(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or

(iii) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,

is liable and subject to the remedies provided for in Article 20.81.18 (Civil and Administrative Procedures and Remedies). (69)

Each Party shall provide for criminal procedures and penalties to be applied when a person, other than a non-profit library, archive, (70) educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for the purposes of commercial advantage or financial gain in any of the foregoing activities.

Criminal procedures and penalties listed in subparagraphs (a), (c), and (f) of Article 20.84.6 (Criminal Procedures and Penalties) shall apply, as applicable to infringements mutatis mutandis, to the activities described in subparagraphs (a) and (b) of this paragraph.

2. In implementing paragraph 1, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measure implementing paragraph 1.

3. Each Party shall provide that a violation of a measure implementing this Article is a separate cause of action, independent of any infringement that might occur under the Party's law on copyright and related rights.

4. Each Party shall confine exceptions and limitations to measures implementing paragraph 1 to the following activities, which shall be applied to relevant measures in accordance with paragraph 5: (71)

(a) non-infringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(65) Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not tender effective a technological measure the only purpose of which is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.

(66) A Party that, prior to the date of entry into force of this Agreement, maintains legal protections for technological protection measures consistent with Article 20.66.1 (Technological Protection Measures), may maintain its current scope of limitations, exceptions, and regulations regarding circumvention.

(67) For greater certainty, for the purposes of this subparagraph, a Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

(68) For greater certainty, no Party is required to impose civil or criminal liability under this subparagraph for a person that circumvents any effective technological measure that protects any of the exclusive rights of copyright or related tights in a protected work, performance, or phonogram, but does not control access to that work, performance, or phonogram.

(69) or greater certainty, no Party is required to impose liability under this Article and Article 20.67 (Rights Management Information) for actions taken by that Party or a third person acting with authorization or consent of the Party.

(70) For greater certainty, a Party may treat a non-profit museum as a non-profit archive.

(71) A Party may request consultations with the other Parties to consider how to address, under paragraph 4, activities of a similar nature that a Party identifies after the date this Agreement enters into force.

(b) non-infringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for those activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(c) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing paragraph (1)(b);

(d) non-infringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(e) non-infringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

(f) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;

(g) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and

(h) in addition, a Party may provide additional exceptions or limitations for non- infringing uses of a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those non-infringing uses is demonstrated by substantial evidence in a legislative, regulatory, or administrative proceeding in accordance with the Party's law.

5. The exceptions and limitations to measures implementing paragraph 1 for the activities set forth in paragraph 4 may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures under the Party's legal system:

(a) measures implementing paragraph (1)(a) may be subject to exceptions and limitations with respect to each activity set forth in paragraph (4);

(b) measures implementing paragraph (1)(b), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in paragraphs (4)(a), (b), (c), (d), and (f); and

(c) measures implementing paragraph (1)(b), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in paragraphs (4)(a) and (f).

6. Effective technological measure means a technology, device, or component that, in the normal course of its operation,

controls access to a protected work, performance, or phonogram, or protects copyright or rights related to copyright. (72)

(72) For greater certainty, a technological measure that can, in a usual case, be circumvented accidentally is not an "effective" technological measure.

Article 20.67. Rights Management Information (73)

1. In order to provide adequate and effective legal remedies to protect rights management information (RMD, each Party shall provide that any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of the copyright or related right of authors, performers, or producers of phonograms, knowingly: (74)

(a) removes or alters any RMI;

(b) distributes or imports for distribution RMI knowing that the RMI has been altered without authority; (75) or

(c) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works, performances, or phonograms, knowing that RMI has been removed or altered without authority, is liable and subject to the remedies set out in Article 20.81 (Civil and Administrative Procedures and Remedies).

2. Each Party shall provide for criminal procedures and penalties to be applied if a person is found to have engaged willfully and for purposes of commercial advantage or financial gain in any of the activities referred to in paragraph 1.

3. A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution or public non-commercial broadcasting entity. (76)

4. For greater certainty, nothing prevents a Party from excluding from a measure that implements paragraphs 1 through 3 a lawfully authorized activity that is carried out for the purpose of law enforcement, essential security interests, or other related governmental purposes, such as the performance of a statutory function.

5. For greater certainty, nothing in this Article obligates a Party to require a right holder in a work, performance, or phonogram to attach RMI to copies of the work, performance, or phonogram, or to cause RMI to appear in connection with a communication of the work, performance, or phonogram to the public.

6. RMI means:

(a) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of a right in the work, performance, or phonogram;

(b) information about the terms and conditions of the use of the work, performance, or phonogram; or

(c) any numbers or codes that represent the information referred to in subparagraphs (a) and (6),

if any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

(73) A Party may comply with the obligations in this Article by providing legal protection only to electronic rights management information.

(74) For greater certainty, a Party may extend the protection afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in subparagraphs (a), (b), and (c), and to other related right holders.

(75) A Party may meet its obligation under this subparagraph if it provides effective protection for original compilations, provided that the acts described in this subparagraph are treated as infringements of copyright in those original compilations.

(76) For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.

Article 20.68. Collective Management

The Parties recognize the important role of collective management societies for copyright and related rights in collecting and distributing royalties (77) based on practices that are fair, efficient, transparent, and accountable, which may include appropriate record keeping and reporting mechanisms.

(77) For greater certainty, royalties may include equitable remuneration.

Section I. Trade Secrets (78) (79)

(78) For greater certainty, the enforcement obligations and principles set forth in Section J also apply to the obligations in this section, as relevant.

(79) For greater certainty, this Section is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.

Article 20.69. Protection of Trade Secrets

In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices.

Article 20.70. Civil Protection and Enforcement

In fulfilling its obligation under paragraphs 1 and 2 of Article 39 of the TRIPS Agreement, each Party shall:

(a) provide civil judicial procedures (80) for any person lawfully in control of a trade secret to prevent, and obtain redress for, the misappropriation of the trade secret by any other person; and

(b) not limit the duration of protection for a trade secret, so long as the conditions in Article 20.72 (Definitions) exist.

(80) For greater certainty, civil judicial procedures do not have to be federal provided that those procedures are available.

Article 20.71. Criminal Enforcement

1. Subject to paragraph 2, each Party shall provide for criminal procedures and penalties for the unauthorized and willful misappropriation (81) of a trade secret.

2. With respect to the acts referred to in paragraph 1, a Party may, as appropriate, limit the availability of its procedures, or limit the level of penalties available, to one or more of the following cases in which the act is:

(a) for the purposes of commercial advantage or financial gain;

(b) related to a product or service in national or international commerce; or

(c) intended to injure the owner of that trade secret.

(81) For the purposes of this Article, "willful misappropriation" requires a person to have known that the trade secret was acquired in a manner contrary to honest commercial practices.

Article 20.72. Definitions

For the purposes of this Section:

trade secret means information that:

(a) 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;

(b) has actual or potential commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

misappropriation means the acquisition, use, or disclosure of a trade secret in a manner contrary to honest commercial practices, including the acquisition, use, or disclosure of a trade secret by a third party that knew, or had reason to know, that the trade secret was acquired in a manner contrary to honest commercial practices. (82) Misappropriation does not include situations in which a person:

(a) reverse engineered an item lawfully obtained;

(b) independently discovered information claimed as a trade secret; or

(c) acquired the subject information from another person in a legitimate manner without an obligation of confidentiality or knowledge that the information was a trade secret; and

manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence, and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.

(82) For greater certainty, "misappropriation" as defined in this paragraph includes cases in which the acquisition, use, or disclosure involves a computer system.

Article 20.73. Provisional Measures

In the civil judicial proceedings described in Article 20.70 (Civil Protection and Enforcement), each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures, such as orders to prevent the misappropriation of the trade secret and to preserve relevant evidence.

Article 20.74. Confidentiality

In connection with the civil judicial proceedings described in Article 20.70 (Civil Protection and Enforcement), each Party shall provide that its civil judicial authorities have the authority to:

(a) order specific procedures to protect the confidentiality of any trade secret, alleged trade secret, or any other information asserted by an interested party to be confidential; and

(b) impose sanctions on parties, counsel, expert, or other person subject to those proceedings, related to violation of orders concerning the protection of a trade secret or alleged trade secret produced or exchanged in that proceeding, as well as other information asserted by an interested party to be confidential.

Each Party shall further provide in its law that, in cases in which an interested party asserts information to be a trade secret, its judicial authorities shall not disclose that information without first providing that person with an opportunity to make a submission under seal that describes the interest of that person in keeping the information confidential.

Article 20.75. Civil Remedies

In connection with the civil judicial proceedings described in Article 20.70 (Civil Protection and Enforcement), each Party shall provide that its judicial authorities have the authority at least to order:

(a) injunctive relief that conforms to Article 44 of the TRIPS Agreement against a person that misappropriated a trade secret; and

(b) a person that misappropriated a trade secret to pay damages adequate to compensate the person lawfully in control of the trade secret for the injury suffered because of the misappropriation of the trade secret (83) and, if appropriate, because of the proceedings to enforce the trade secret.

(83) For greater certainty, a Party may provide that the determination of damages is carried out after the determination of misappropriation.

Article 20.76. Licensing and Transfer of Trade Secrets

No Party shall discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on those licenses or conditions that dilute the value of the trade secrets.

Article 20.77. Prohibition of Unauthorized Disclosure or Use of a Trade Secret by Government Officials Outside the Scope of Their Official Duties

1. In civil, criminal, and regulatory proceedings in which trade secrets may be submitted to a court or government entity, each Party shall prohibit the unauthorized disclosure of a trade secret by a government official at the central level of government outside the scope of that person's official duties.

2. Each Party shall provide for in its law deterrent level penalties, including monetary fines, suspension or termination of employment, and imprisonment, to guard against the unauthorized disclosure of a trade secret described in paragraph 1.

Section J. Enforcement

Article 20.78. General Obligations

1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law so as to permit effective action against an act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. (84) These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Each Party confirms that the enforcement procedures set forth in Article 20.81 (Civil and Administrative Procedures and Remedies), Article 20.82 (Provisional Measures), and Article 20.84 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.

3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

4. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

5. In implementing this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.

(84) For greater certainty, and subject to Article 44 of the TRIPS Agreement and this Agreement, each Party confirms that it makes those remedies available with respect to enterprises, regardless of whether the enterprises are private or state-owned.

Article 20.79. Presumptions

1. In civil, criminal, and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption (85) that, in the absence of proof to the contrary:

(a) the person whose name is indicated in the usual manner (86) as the author, performer, or producer of the work, performance, or phonogram, or if applicable the publisher, is the designated right holder in that work, performance, or phonogram; and

(b) the copyright or related right subsists in that subject matter.

2. In connection with the commencement of a civil, administrative, or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered prima facie valid.

3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted by the competent authority of a Party, that Party shall provide that each claim in the patent be considered prima facie to satisfy the applicable criteria of patentability in its territory. (87) (88)

(85) For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

(86) For greater certainty, a Party may establish the means by which it shall determine what constitutes the "usual manner" for a particular physical support.

(87) For greater certainty, if a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.

(88) A Party may provide that this paragraph applies only to those patents that have been applied for, examined, and granted after the entry into force of this Agreement.

Article 20.80. Enforcement Practices with Respect to Intellectual Property Rights

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

(a) are in writing and preferably state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

(b) are published (89) or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.

2. Each Party recognizes the importance of collecting and analyzing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.

3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, such as statistical information that the Party may collect for those purposes.

(89) For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public online.

Article 20.81. Civil and Administrative Procedures and Remedies

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter. (90)

2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.

3. Each Party shall provide (91) that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

4. In determining the amount of damages under paragraph 3, each Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value 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.

5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement. (92)

6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms, or performances, each Party shall establish or maintain a system that provides for one or more of the following:

(a) pre-established damages, which shall be available on the election of the right holder; or

(b) additional damages. (93)

7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

(a) pre-established damages, which shall be available on the election of the right holder; or

(b) additional damages. (94)

8. Pre-established damages referred to in paragraphs 6 and 7 shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.

9. In awarding additional damages referred to in paragraphs 6 and 7, judicial authorities shall have the authority to award those additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.

10. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents, and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under the Party's law.

11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties in the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to those proceedings.

12. Each Party shall provide that in civil judicial proceedings:

(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;

(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risk of further infringement; and

(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.

13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources, or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or the alleged infringer, as applicable, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. This information may include information regarding any person involved in any aspect of the infringement or alleged infringement and the means of production or the channels of distribution of the

infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of the goods or services and of their channels of distribution.

14. In cases in which a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under its control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, each Party shall provide that its judicial authorities shall have the authority to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence.

15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

16. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, expert, or other person subject to the courtâs jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

17. To the extent that a civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that those procedures conform to principles equivalent in substance to those set out in this Article.

18. In civil judicial proceedings concerning the acts described in Article 20.66 (Technological Protection Measures) and Article 20.67 (Rights Management Information):

(a) each Party shall provide that its judicial authorities have the authority at least to: (95)

(i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity,

(ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article,

(iii) order court costs, fees or expenses as provided for under paragraph 10, and

(iv) order the destruction of devices and products found to be involved in the prohibited activity; and

(b) a Party may provide that damages are not available against a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.

(90) For the purposes of this Article, the term "right holders" includes those authorized licensees, federations, and associations that have the legal standing and authority to assert those rights. The term "authorized licensee" includes the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

(91) A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5, and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6, and 7 to be ordered in parallel.

(92) A Party may comply with this paragraph by presuming those profits to be the damages referred to in paragraph 3.

(93) For greater certainty, additional damages may include exemplary or punitive damages.

(94) For greater certainty, additional damages may include exemplary or punitive damages.

(95) For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 20.66 (Technological Protection Measures) and 20.67 (Rights Management Information), if those remedies are available under its copyright law.

Article 20.82. Provisional Measures

1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right *inaudita altera parte* expeditiously in accordance with that Party's judicial rules.

2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. That security or equivalent assurance shall not unreasonably deter recourse to those procedures.

3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials, and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article 20.83. Special Requirements Related to Border Measures

1. Each Party shall provide for applications to suspend the release of, or to detain, suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party. (96)

2. Each Party shall provide that a right holder, submitting an application referred to in paragraph 1, to initiate procedures for the Party's competent authorities (97) to suspend release into free circulation of, or to detain, suspected counterfeit or confusingly similar trademark or pirated copyright goods, is required to:

(a) provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is prima facie an infringement of the right holder's intellectual property right; and

(b) supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognizable by its competent authorities.

The requirement to provide that information shall not unreasonably deter recourse to these procedures.

3. Each Party shall provide that its competent authorities have the authority to require a right holder submitting an application referred to in paragraph 1 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities, and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:

(a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee, or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods; (98) or

(b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.

5. Each Party shall provide that its competent authorities may initiate border measures ex officio against suspected counterfeit trademark goods or pirated copyright goods under customs control (99) that are:

(a) imported;

(b) destined for export;

(c) in transit; (100) and

(d) admitted into or exiting from a free trade zone or a bonded warehouse.

6. Nothing in this Article precludes a Party from exchanging, if appropriate and with a view to eliminating international trade in counterfeit trademarked goods or pirated copyrighted goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transshipped through its territory and are destined for the territory of the other Party, to inform that other Party's efforts to identify suspect goods upon arrival in its territory.

7. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraphs 1 and 5, whether the suspect goods infringe an intellectual property right. If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

8. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

9. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee, or destruction fee, that Party shall not set the fee at an amount that unreasonably deters recourse to these procedures.

10. This Article applies to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travelers' personal luggage. (101)

(96) For the purposes of this Article: (a) "counterfeit trademark goods" means goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of those goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and (b) "pirated copyright goods" means goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article when the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

(97) For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative, or law enforcement authorities under a Party's law.

(98) For greater certainty, a Party may establish reasonable procedures to receive or access that information.

(99) For the purposes of this Article, "goods under customs control" means goods that are subject to a Party's customs procedures.

(100) For the purposes of this Article, an "in-transit" good means a good that is under "Customs transit" or "transshipped," as defined in the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), done at Kyoto on May 18, 1973, as amended at Brussels on June 26, 1999.

(101) For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.

Article 20.84. Criminal Procedures and Penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of willful copyright or related rights piracy, "on a commercial scale" includes:

(a) acts carried out for commercial advantage or financial gain; and

(b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace. (102) (103)

2. Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties. (104)

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation (105) and domestic use, in the course of trade and on a commercial scale, of a label or packaging:

(a) to which a trademark has been applied without authorization that is identical to, or cannot be distinguished from, a trademark registered in its territory; and

(b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.

4. Each Party shall provide for criminal procedures to be applied against a person who, willfully and without the authorization of the holder (106) of copyright or related rights in a cinematographic work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of the cinematographic work or any part thereof, from a performance of the motion picture or other audiovisual work in a movie theater or other venue that is being used primarily for the exhibition of a copyrighted motion picture. In addition to the criminal procedures, a Party may provide for administrative enforcement procedures.

5. With respect to the offenses for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offenses described in paragraphs 1 through 5, each Party shall provide:

(a) penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity; (107)

(b) that its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety; (108)

(c) that its judicial or other competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offense, documentary evidence relevant to the alleged offense, and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;

(d) that its judicial authorities have the authority to order the forfeiture, at least for serious offenses, of any assets derived from or obtained through the infringing activity;

(e) that its judicial authorities have the authority to order the forfeiture or destruction of:

(i) all counterfeit trademark goods or pirated copyright goods,

(ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods, and

(iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offense,

In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (d) occur without compensation of any kind to the defendant;

(f) that its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil (109) infringement proceedings; and

(g) that its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder.

7. With respect to the offenses described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

(102) The Parties understand that a Party may comply with subparagraph (b) by addressing those significant acts under its criminal procedures and penalties for non-authorized uses of protected works, performances and phonograms in its law.

(103) A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

(104) The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. The Parties understand that criminal procedures and penalties as specified in paragraphs 1, 2, and 3 are applicable in any free trade zones in a Party.

(105) A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

(106) For greater certainty, the theater or venue owner or operator shall be entitled to contact the criminal law enforcement authorities with respect to the suspected commission of the acts referred to in this provision. For greater certainty, nothing in this paragraph expands or diminishes the existing rights and obligations of a theater or venue owner or operator with respect to the cinematographic work.

(107) The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

(108) A Party may also account for those circumstances through a separate criminal offense.

(109) A Party may also provide this authority in connection with administrative infringement proceedings.

Article 20.85. Protection of Encrypted Program-Carrying Satellite and Cable Signals

1. Each Party shall make it a criminal offense to:

(a) manufacture, assemble, (110) modify, import, export, (111) sell, or otherwise distribute a tangible or intangible device or system knowing or having reason to know (112) that the device or system meets at least one of the following conditions:

(i) it is intended to be used to assist, or

(ii) it is primarily of assistance,

in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor (113) of that signal; (114) and

(b) with respect to an encrypted program-carrying satellite signal, willfully:

(i) receive (115) that signal, or

(ii) further distribute (116) that signal,

knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured by an activity described in paragraph 1.

3. Each Party shall provide for criminal penalties and civil (117) remedies for willfully:

(a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorized reception of any encrypted program-carrying cable signal; and

(b) receiving, or assisting another to receive, (118) an encrypted program-carrying cable signal without authorization of the lawful distributor of the signal.

(110) For greater certainty, a Party may treat "assemble" as incorporated in "manufacture".

(111) The obligation regarding export may be met by making it a criminal offense to possess and distribute a device or system described in this paragraph.

(112) For the purposes of this paragraph, a Party may provide that "having a reason to know" may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party's "knowledge" requirements. A Party may treat "having reason to know" as meaning "willful negligence".

(113) With regard to the criminal offenses and penalties in paragraphs 1 and 3, a Party may require a demonstration of intent to avoid payment to the lawful distributor, or a demonstration of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.

(114) For the purposes of this Article, a Party may provide that a "lawful distributor" means a person that has the lawful tight in that Party's territory to distribute the encrypted program carrying signal and authorize its decoding.

(115) For greater certainty and for the purposes of paragraphs 1(b) and 3(b), a Party may provide that willful receipt of an encrypted program carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.

(116) For greater certainty, a Party may interpret "further distribute" as "retransmit to the public".

(117) In providing for civil remedies, a Party may require a demonstration of injury.

(118) A Party may comply with its obligation in respect of "assisting another to receive" by providing for criminal penalties to be available against a person willfully publishing any information in order to enable or assist another person to receive a signal without authorization of the lawful distributor of the signal.

Article 20.86. Government Use of Software

1. Each Party recognizes the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights.

2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorized by the relevant license. These measures apply to the acquisition and management of the software for government use.

Article 20.87. Internet Service Providers

1. For the purpose of Article 20.88 (Legal Remedies and Safe Harbors), an Internet Service Provider is:

(a) a provider of services for the transmission, routing, or providing of connections for digital online communications without modification of their content, between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 20.88.2(a) (Legal Remedies and Safe Harbors); or

(b) a provider of online services undertaking the functions in Article 20.88.2(b), Article 20.88.2(c), or Article 20.88.2(d) (Legal Remedies and Safe Harbors).

2. For the purposes of Article 20.88 (Legal Remedies and Safe Harbors), "copyright" includes related rights.

Article 20.88. Legal Remedies and Safe Harbors (119)

1. The Parties recognize the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective and expeditious action by right holders against copyright infringement covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for right holders to address that copyright infringement and shall establish or maintain appropriate safe harbors in respect of online services that are Internet Service Providers. This framework of legal remedies and safe harbors shall include:

(a) legal incentives for Internet Service Providers to cooperate with copyright owners to deter the unauthorized storage and transmission of copyrighted materials or, in the alternative, to take other action to deter the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.

2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:

(a) transmitting, routing, or providing connections for material without modification of its content or the intermediate and transient storage of that material done automatically in the course of such a technical process; (120)

(b) caching carried out through an automated process;

(c) storage, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider; and

(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or, alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b): (121)

(a) With respect to the functions referred to in paragraphs 2(c) and 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice (122) of alleged infringement from the right holder or a person authorized to act on its behalf.

(b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled. (123)

4. For the purposes of the functions referred to in paragraphs 2(c) and 2(d), each Party shall establish appropriate procedures in its laws or regulations for effective notices of claimed infringement, and effective counter-notices by those whose material is removed or disabled through mistake or misidentification. If material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restores the material that is the subject of a counter-notice, unless the person giving the original notice seeks relief through civil judicial proceedings within a reasonable period of time as set forth in that Party's laws or regulations.

5. Each Party shall ensure that monetary remedies are available in its legal system against a person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party (124) as a result of an Internet Service Provider relying on the misrepresentation.

6. Eligibility for the limitations in paragraph 1 shall be conditioned on the Internet Service Provider:

(a) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers;

(b) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks; and

(c) with respect to the functions identified in paragraphs 2(c) and 2(d), not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity.

7. Eligibility for the limitations identified in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with the technical measures identified in paragraph 6(b).

8. Each Party shall provide procedures, whether judicial or administrative, in accordance with its legal system, and consistent with principles of due process and privacy, that enable a copyright owner that has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, in cases in which that information is sought for the purpose of protecting or enforcing that copyright.

9. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defenses under a Party's legal system.

10. The Parties recognize the importance, in implementing their obligations under this Article, of taking into account the impact on the right holders and Internet Service Providers.

(119) Annex 20-B (Annex to Section J) applies to Articles 20.88.3, 20.88.4, and 20.88.6.

(120) The Parties understand that these limitations shall apply only where the Internet Service Provider does not initiate the chain of transmission of the materials, and does not select the material or its recipients.

(121) The Parties understand that a Party that has yet to implement the obligations in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process provided in paragraphs 3 and 4, and does not entail advance government review of each individual notice.

(122) For greater certainty, a notice of alleged infringement, as may be set out under a Party's law, must contain information that: (a) is reasonably sufficient to enable the Internet Service Provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement; and (b) has a sufficient indicia of reliability with respect to the authority of the person sending the notice.

(123) With respect to the function in paragraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to material to circumstances in which the Internet Service Provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.

(124) For greater certainty, the Parties understand that, "any interested party" may be limited to those with a legal interest recognized under that Party's law.

Section K. Final Provisions

Article 20.89. Final Provisions

1. Except as otherwise provided in Article 20.10 (Application of Chapter to Existing Subject Matter and Prior Acts) and paragraphs 2, 3, and 4, each Party shall implement the provisions of this Chapter on the date of entry into force of this Agreement.

2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the Articles referred to below for that Party than relevant measures that are in effect on the date of signature of this Agreement.

3. With regard to obligations subject to a transition period, Mexico shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement:

(a) Article 20.7 (International Agreements), UPOV 1991, four years;

(b) Article 20.45 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;

(c) Article 20.46 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;

(d) Article 20.48 (Protection of Undisclosed Test or Other Data), five years;

(e) Article 20.70 (Civil Protection and Enforcement), Article 20.73 (Provisional Measures) and Article 20.75 (Civil Remedies), five years; and

(f) Articles 20.87 (Internet Service Providers) and 20.88 (Legal Remedies and Safe Harbors), three years.

4. With regard to obligations subject to a transition period, Canada shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement.

(a) Article 20.7.2(f) (International Agreements), four years;

(b) Article 20.44 (Patent Term Adjustment for Unreasonable Granting Authority Delays), 4.5 years; and

(c) Article 20.62(a) (Term of Protection for Copyright and Related Rights), 2.5 years.

ANNEX 20-A. ANNEX TO ARTICLE 20.50

1. As an alternative to implementing Article 20.50, and subject to paragraph 2, Mexico may instead maintain a system other than judicial proceedings that precludes, based upon patent- related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

2. If Mexico maintains the system referred to in paragraph 1, Mexico shall ensure that in administrative proceedings under that system:

(a) a person of another Party that is directly affected by the proceeding is provided, whenever possible and, in accordance with domestic procedures, with reasonable notice of the initiation of a proceeding, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issue in question;

(b) a person of another Party that is directly affected by the proceeding is afforded a reasonable opportunity to present facts and arguments in support of that personâs position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) the procedures are in accordance with its law.

ANNEX 20-B. ANNEX TO SECTION J

1. In order to facilitate the enforcement of copyright online and to avoid unwarranted market disruption in the online environment, Articles 20.88.3, 20.88.4, and 20.88.6 (Legal Remedies and Safe Harbors) shall not apply to a Party provided that, as from the date of agreement in principle of this Agreement, the Party continues to:

(a) prescribe in its law circumstances under which Internet Service Providers do not qualify for the limitations described in Article 20.88. 1(b) (Legal Remedies and Safe Harbors);

(b) provide statutory secondary liability for copyright infringement in cases in which a person, by means of the Internet or

another digital network, provides a service primarily for the purpose of enabling acts of copyright infringement, in relation to factors set out in its law, such as:

(i) whether the person marketed or promoted the service as one that could be used to enable acts of copyright infringement;

(ii) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;

(iii) whether the service has significant uses other than to enable acts of copyright infringement;

(iv) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;

(v) any benefits the person received as a result of enabling the acts of copyright infringement; and

(vi) the economic viability of the service if it were not used to enable acts of copyright infringement;

(c) require Internet Service Providers carrying out the functions referred to in Article 20.88.2(a) and (c) (Legal Remedies and Safe Harbors) to participate in a system for forwarding notices of alleged infringement, including if material is made available online, and if the Internet Service Provider fails to do so, subjecting that provider to pre-established monetary damages for that failure;

(d) induce Internet Service Providers offering information location tools to remove within a specified period of time any reproductions of material that they make, and communicate to the public, as part of offering the information location tool upon receiving a notice of alleged infringement and after the original material has been removed from the electronic location set out in the notice; and

(e) induce Internet Service Providers carrying out the function referred to in Article 20.88.2(c) (Legal Remedies and Safe Harbors) to remove or disable access to material upon becoming aware of a decision of a court of that Party to the effect that the person storing the material infringes copyright in the material.

2. For a Party to which Articles 20.88.3, 20.88.4, and 20.88.6 (Legal Remedies and Safe Harbors) do not apply pursuant to paragraph 1, and in light of, among other things, paragraph 1(b), for the purposes of Article 20.88.1(a), legal incentives shall not mean the conditions for Internet Service Providers to qualify for the limitations provided for in Article 20.88.1(b), as set out in Article 20.88.3.

3. Pursuant to paragraph 1, for a Party to which Articles 20.88.3, 20.88.4, and 20.88.6 (Legal Remedies and Safe Harbors) do not apply:

(a) the term "modification" in paragraphs 20.87.1(a) and 20.88.2(a) does not include modifications made for solely technical reasons such as division into packets; and

(b) with regard to paragraph 20.88.7, "except to the extent consistent with the technical measures identified in paragraph 6(b)" does not apply.

Chapter 21. COMPETITION POLICY

Article 21.1. Competition Law and Authorities

1. Each Party shall maintain national competition laws that proscribe anticompetitive business conduct to promote competition in order to increase economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct.

2. Each Party shall endeavor to apply its national competition laws to all commercial activities in its territory. This does not prevent a Party from applying its national competition laws to commercial activities outside its borders that have an appropriate nexus to its jurisdiction.

3. Each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent, established in its law, and based on public interest or public policy grounds.

4. Each Party shall maintain a national competition authority or authorities (national competition authorities) responsible for the enforcement of its national competition laws.

5. Each Party shall ensure that the enforcement policies of its national competition authorities include:

(a) treating persons of another Party no less favorably than persons of the Party in like circumstances;

(b) considering, if applicable, the effect of enforcement activities on related enforcement activities by a national competition authority of another Party; and

(c) limiting remedies relating to conduct or assets outside the Party's territory to situations in which there is an appropriate nexus to harm or threatened harm affecting the Partyâs territory or commerce.

Article 21.2. Procedural Fairness In Competition Law Enforcement

1. For the purposes of this Article, "enforcement proceeding" means a judicial or administrative proceeding following an investigation into the alleged violation of the national competition laws and does not include matters occurring before a grand jury.

2. Each Party shall ensure that its national competition authorities:

(a) provide transparency, including in writing, regarding the applicable competition laws, regulations, and procedural rules pursuant to which national competition law investigations and enforcement proceedings are conducted;

(b) conduct their investigations subject to definitive deadlines or within a reasonable time frame, if the investigations are not subject to definitive deadlines;

(c) afford to a person a reasonable opportunity to be represented by legal counsel, including by:

(i) allowing, at the person's request, counsel's participation in all meetings or proceedings between the national competition authority and the person. This sub-subparagraph does not apply to matters occurring before a grand jury, ex parte proceedings, or to searches conducted pursuant to judicial warrants, and

(ii) recognizing a privilege, as acknowledged by its law, if not waived, for lawful confidential communications between the counsel and the person if the communications concern the soliciting or rendering of legal advice; and

(d) with respect to reviews of merger transactions, permit early consultations between the national competition authority and the merging persons to provide their views concerning the transaction, including on potentially dispositive issues.

3. Each Party shall ensure that all information that its national competition authorities obtain during investigations and reviews, and that its law protects as confidential or privileged is not disclosed, subject to applicable legal exceptions.

4. Each Party shall ensure that its national competition authorities do not state or imply in any public notice confirming or revealing the existence of a pending or ongoing investigation against a particular person that that person has in fact violated the Party's national competition laws.

5. Each Party shall ensure that its national competition authorities (1) have the ultimate burden of establishing the legal and factual basis for an alleged violation in an enforcement proceeding; however, a Party may require that a person against whom that allegation is made be responsible for establishing certain defenses to the allegation.

6. Each Party shall ensure that all final decisions in contested civil or administrative matters finding a violation of its national competition laws are in writing and set out the findings of fact and conclusions of law on which they are based. Each Party shall make public those final decisions, with the exception of any confidential material contained therein.

7. Each Party shall ensure that before it imposes a sanction or remedy against a person for a violation of its national competition laws, it affords the person a reasonable opportunity to:

(a) obtain information regarding the national competition authority's concerns, including identification of the specific competition laws alleged to have been violated;

(b) engage with the relevant national competition authority at key points on significant legal, factual, and procedural issues;

(c) have access to information that is necessary to prepare an adequate defense if the person contests the allegations in an enforcement proceeding; however, a national competition authority is not obliged to produce information that is not already in its possession. If a Party's national competition authority (2) introduces or will introduce confidential information in an enforcement proceeding, the Party shall, as permissible under its law, allow the person under investigation or its legal counsel timely access to that information;

(d) be heard and present evidence in its defense, including rebuttal evidence, and, whenever relevant, the analysis of a properly qualified expert;

(e) cross-examine any witness testifying in an enforcement proceeding; and

(f) contest an allegation that the person has violated national competition laws before an impartial judicial or administrative authority, provided that in the case of an administrative authority, the decision-making body must be independent of the unit offering evidence in support of the allegation;

except that a Party may provide for these opportunities within a reasonable time after it imposes an interim measure.

8. Each Party shall provide a person that is subject to the imposition of a fine, sanction, or remedy for violation of its national competition laws with the opportunity to seek judicial review by a court or independent tribunal, including review of alleged substantive or procedural errors, unless the person voluntarily agreed to the imposition of the fine, sanction, or remedy.

9. Each Party shall ensure that criteria used for calculating a fine for a violation of national competition laws are transparent. If a Party imposes a fine as a penalty for a non-criminal violation of its national competition laws that is based on the person's revenue or profit, it shall ensure that the calculation considers revenue or profit relating to the Party's territory.

10. Each Party's national competition authority shall maintain measures to preserve all relevant evidence, including exculpatory evidence, that it collected as part of an enforcement proceeding until the review is exhausted.

(1) For Canada, this includes the public prosecutor for criminal prosecutions.

(2) For Canada, this includes the public prosecutor for criminal prosecutions.

Article 21.3. Cooperation

1. The Parties recognize the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, the Parties' national competition authorities shall endeavor to cooperate in relation to their enforcement laws and policies, including through investigative assistance, notification, consultation, and exchange of information.

2. The Parties shall seek to further strengthen cooperation and coordination between their respective national competition authorities, particularly regarding those commercial practices that hinder market efficiency and reduce consumer welfare within the free trade area.

3. Each Party shall adopt or maintain measures sufficient to permit negotiations of cooperation instruments that may address, among other matters, enhanced information sharing and mutual legal assistance.

4. The Parties' national competition authorities shall seek to cooperate with respect to their competition policies and in the enforcement of their respective national competition laws, which may include coordination of investigations that raise common law enforcement concerns. This cooperation shall be compatible with each Party's law and important interests, in accordance with their law governing legal privilege and disclosure of business secrets and other confidential information, and within reasonably available resources. The Parties' national competition authorities may cooperate on the basis of mechanisms that exist or may be developed.

5. Recognizing that the Parties can benefit by sharing their diverse experience in developing, implementing, and enforcing their national competition laws and policies, the Parties' national competition authorities shall consider undertaking mutually agreed technical cooperation activities, including training programs.

6. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organizations in this area, including the Competition Committee of the Organisation for Economic Co-operation and Development, and the International Competition Network.

Article 21.4. Consumer Protection

1. The Parties recognize the importance of consumer protection policy and enforcement to creating efficient and competitive markets, and enhancing consumer welfare in the free trade area.

2. Each Party shall adopt or maintain national consumer protection laws or other laws or regulations that proscribe

fraudulent and deceptive commercial activities, recognizing that the enforcement of those laws and regulations is in the public interest. The laws and regulations a Party adopts or maintains to proscribe these activities may be civil or criminal in nature.

3. The Parties recognize that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties to address these activities effectively is important and in the public interest.

4. The Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws through activities such as the exchange of consumer complaints and other enforcement information. That cooperation and coordination may be based on cooperation mechanisms in existence. Each Party shall protect confidential information in accordance with its law, including business information.

5. The Parties shall endeavor to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, law, or enforcement, as determined by each Party and compatible with their respective law and important interests, and within their reasonably available resources.

Article 21.5. Transparency

1. The Parties recognize the value of making competition enforcement and advocacy policies as transparent as possible.

2. On request of another Party, a Party shall make available to the requesting Party public information concerning:

(a) its national competition law enforcement policies and practices; and

(b) exemptions and immunities to its national competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.

Article 21.6. Consultations

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of another Party, a Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavor to provide relevant non-confidential, non-privileged information to the other Party. Article 21.7: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 14 (Investment) or Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

Chapter 22. STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Article 22.1. Definitions

For the purposes of this Chapter:

Arrangement means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Co-operation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of January 1, 1979;

commercial activities means activities that an enterprise undertakes with an orientation toward profit-making (1) and that result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise; (2)

(1) For greater certainty, activities undertaken by an enterprise that operates on a not-for-profit basis or on a cost-recovery basis are not

activities undertaken with an orientation toward profit-making.

(2) For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

commercial considerations means 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 in the relevant business or industry;

designate means to establish, name, or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

designated monopoly means a privately owned monopoly that is designated after the date of entry into force of this Agreement and a government monopoly that a Party designates or has designated;

financial services supplier, financial institution, and financial services have the same meaning as in Article 17.1 (Definitions);

government monopoly means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

independent pension fund means an enterprise that is owned, or controlled through ownership interests, by a Party that:

(a) is engaged exclusively in the following activities:

(i) administering or providing a plan for pension, retirement, social security, disability, death, or employee benefits, or any combination thereof solely for the benefit of natural persons who are contributors to such a plan or their beneficiaries, or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and

(c) is not subject to investment direction by the government of the Party; (3)

(3) Investment direction from the government of a Party does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practice and is not demonstrated solely by the presence of government officials on the enterprise's board of directors or investment panel.

market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency that, in a relevant market in the territory of a Party, is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;

non-commercial assistance (4) means assistance that is limited to certain enterprises, and:

(4) For greater certainty, non-commercial assistance does not include a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

(a) "assistance" means the following forms of assistance:

(i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:

(A) grants or debt forgiveness,

(B) loans, loan guarantees, or other types of financing on terms more favorable than those commercially available to that enterprise, or

(C) equity capital inconsistent with the usual investment practice (including for the provision of risk capital) of private investors,

(i) the provision of goods or the supply of services other than general infrastructure, on terms more favorable than those

commercially available to the enterprise, or

(ii) the purchase of goods on terms more favorable than those commercially available to the enterprise;

(b) "certain enterprises" means an enterprise or industry or group of enterprises or industries;

(c) "limited to certain enterprises" means that the Party or any of the Party's state enterprises or state-owned enterprises, or a combination thereof:

(i) explicitly limits access to the assistance to certain enterprises,

(ii) provides assistance to a limited number of certain enterprises,

(iii) provides assistance which is predominantly used by certain enterprises,

(iv) provides a disproportionately large amount of the assistance to certain enterprises, or

(v) otherwise favors certain enterprises through the use of its discretion in the provision of assistance; (5) and

(5) For greater certainty, assistance that is limited, in law or fact, to state enterprises or state-owned enterprises of a Party, or a combination thereof, is "limited to certain enterprises".

(d) assistance that falls under Article 22.6.1, Article 22.6.2, or Article 22.6.3 (Non- Commercial Assistance) shall be deemed to be "limited to certain enterprises";

public service mandate means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory; (6)

(6) For greater certainty, a service to the general public includes the distribution of goods and the supply of general infrastructure services.

state-owned enterprise means an enterprise that is principally engaged in commercial activities, and in which a Party:

(a) directly or indirectly (7) owns more than 50 percent of the share capital;

(b) controls, through direct or indirect ownership interests, the exercise of more than 50 percent of the voting rights;

(c) holds the power to control the enterprise through any other ownership interest, including indirect or minority ownership; (8) or

(d) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

(7) For the purposes of this definition, the term "indirectly" refers to situations in which a Party holds an ownership interest in an enterprise through one or more state enterprises of that Party. At each level of the ownership chain, the state enterprise "either alone or in combination with other state enterprises" must own, or control through ownership interests, another enterprise.

(8) For the purposes of this subparagraph, a Party holds the power to control the enterprise if, through an ownership interest, it can determine or direct important matters affecting the enterprise, excluding minority shareholder protections. In determining whether a Party has this power, all relevant legal and factual elements shall be taken into account on a case-by-case basis. Those elements may include the power to determine or direct commercial operations, including major expenditures or investments; issuances of equity or significant debt offerings; or the restructuring, merger, or dissolution of the enterprise.

Article 22.2. Scope

1. This Chapter applies to the activities of state-owned enterprises, state enterprises, or designated monopolies of a Party that affect or could affect trade or investment between Parties within the free trade area. This Chapter also applies to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-Party as provided in Article 22.7 (Adverse Effects).

2. This Chapter does not apply to:

(a) the regulatory or supervisory activities, or monetary and related credit policy and exchange rate policy, of a central bank or monetary authority of a Party;

(b) the regulatory or supervisory activities of a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial services suppliers; or

(c) activities undertaken by a Party or one of its state enterprises or state-owned enterprises for the purpose of the resolution of a failing or failed financial institution or any other failing or failed enterprise principally engaged in the supply of financial services.

3. This Chapter does not apply to:

(a) an independent pension fund of a Party; or

(b) an enterprise owned or controlled by an independent pension fund of a Party, except:

(i) Article 22.6.1, Article 22.6.2, Article 22.6.4, and Article 22.6.6 (Non-Commercial Assistance) apply only to a Partyâs direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund, and

(ii) Article 22.6.1, Article 22.6.2, Article 22.6.4, and Article 22.6.6 (Non- Commercial Assistance) apply only to a Partyâs indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.

4. This Chapter does not apply to government procurement.

5. Nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing or maintaining a state enterprise or a state-owned enterprise; or

(b) designating a monopoly.

6. Article 22.4 (Non-Discriminatory Treatment and Commercial Considerations), Article 22.6 (Non-Commercial Assistance), and Article 22.10 (Transparency) do not apply to a service supplied in the exercise of governmental authority. (9)

7. Article 22.4.1(b), Article 22.4.(c), Article 22.4.2(b), and Article 22.4.2(c) (Non- Discriminatory Treatment and Commercial Considerations) do not apply to the extent that a Party's state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

(a) an existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article 14.12.1 (Non-Conforming Measures), Article 15.7.1 (Non-Conforming Measures) or Article 17.10.1 (Non-Conforming Measures), as set out in its Schedule to Annex I or in Section A of its Schedule to Annex II; or

(b) a non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 14.12.2 (Non- Conforming Measures), Article 15.7.2 (Non-Conforming Measures) or Article 17.10.2 (Non-Conforming Measures), as set out in its Schedule to Annex I or in Section B of its Schedule to Annex II.

(9) For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in the GATS, including the meaning in its Financial Services Annex if applicable.

Article 22.3. Delegated Authority

Consistent with Article 1.3 (Persons Exercising Delegated Governmental Authority), each Party shall ensure that if its state-owned enterprises, state enterprises, or designated monopolies exercise regulatory, administrative, or other governmental authority that the Party has directed or delegated to those entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement. (10)

(10) Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

Article 22.4. Non-Discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, 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 the terms of its public service mandate that are not inconsistent with subparagraphs (b) or (c)(ii);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of another Party treatment no less favorable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of a non-Party, and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favorable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of another Party or of a non-Party; and

(c) in its sale of a good or service:

(i) accords to an enterprise of another Party treatment no less favorable than it accords to enterprises of the Party, of any other Party or of a non-Party, and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favorable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of another Party or of a non-Party. (11)

(11) Article 22.4.1 (Non-Discriminatory Treatment and Commercial Considerations) does not apply with respect to the purchase or sale of shares, stock, or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

2. Each Party shall ensure that each of its designated monopolies:

(a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraphs (b), (c), or (d);

(b) in its purchase of the monopoly good or service:

(i) accords to a good or service supplied by an enterprise of another Party treatment no less favorable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of a non-Party, and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favorable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of another Party or of a non-Party; and

(c) in its sale of the monopoly good or service:

(i) accords to an enterprise of another Party treatment no less favorable than it accords to enterprises of the Party, of any other Party or of a non-Party, and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favorable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of another Party or of a non-Party; and

(d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities the Party or the designated monopoly owns, anticompetitive practices in a non-monopolized market in its territory that negatively affect trade or investment between the Parties.

3. Paragraphs 1(b) and 1(c) and paragraphs 2(b) and 2(c) do not preclude a state-owned enterprise or designated monopoly from:

(a) purchasing or selling goods or services on different terms or conditions including those relating to price; or

(b) refusing to purchase or sell goods or services,

provided that this differential treatment or refusal is undertaken in accordance with commercial considerations.

Article 22.5. Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory. (12) This shall not be

construed to require a Party to provide jurisdiction over those claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.

(12) This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

Article 22.6. Non-Commercial Assistance

1. The following forms of non-commercial assistance, if provided to a state-owned enterprise primarily engaged in the production or sale of goods other than electricity, are prohibited: (13)

(a) loans or loan guarantees provided by a state enterprise or state-owned enterprise of a Party to an uncreditworthy state-owned enterprise of that Party; (14)

(b) non-commercial assistance provided by a Party or a state enterprise or state-owned enterprise of a Party to a state-owned enterprise of that Party, in circumstances where the recipient is insolvent (15) or on the brink of insolvency, (16) without a credible restructuring plan designed to return the state-owned enterprise within a reasonable period of time to long-term viability; or

(c) conversion by a Party or a state enterprise or state-owned enterprise of a Party of the outstanding debt of a state-owned enterprise of that Party to equity, in circumstances where this would be inconsistent with the usual investment practice of a private investor (17)

2. No Party shall provide, either directly or indirectly, (18) non-commercial assistance referred to in paragraphs 1(b) and 1(c).

3. Each Party shall ensure that its state enterprises and state-owned enterprises do not provide, either directly or indirectly, non-commercial assistance referred to in paragraphs 1(a), 1(b), and 1(c).

4. No Party shall cause (19) adverse effects to the interests of another Party through the use of non-commercial assistance that it provides, either directly or indirectly, to its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or

(c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

5. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of another Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to a state-owned enterprise of the Party with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or

(c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

6. No Party shall cause injury to a domestic industry (20) of another Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of that other Party in circumstances in which:

(a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

(b) a like good is produced and sold in the territory of the other Party by the domestic industry of that other Party. (21)

7. A service supplied by a state-owned enterprise of a Party within that Party's territory shall be deemed not to cause adverse effects. (22)

(13) Article 22.6.1, Article 22.6.2, and Article 22.6.3 (Non-Commercial Assistance) do not apply to state-owned enterprises of a Party that are primarily engaged in the construction of general infrastructure such as bridges, highways, ports, or railways (including intercity or urban railways), if (i) the infrastructure is located, in whole or in part, within the territory of the Party; and (ii) neither access to nor use of the infrastructure is limited to certain enterprises, unless those enterprises access or use the infrastructure primarily to supply a service to the general public within the territory of the Party.

(14) A state-owned enterprise is "uncreditworthy" if, at the time the terms of the financing were agreed upon, the state-owned enterprise's financial position would preclude it from obtaining long-term financing from conventional commercial sources (that is, bank loans and non-speculative grade bond issues). To determine whether a state-owned enterprise is creditworthy, all relevant legal and factual elements must be taken into consideration on a case-by-case basis. These elements may include whether a creditor would have reasonable assurance of repayment of contractual debt obligations in a timely manner, for instance, from the cash flow and assets of the business.

(15) A state-owned enterprise is "insolvent" if it is unable to meet its debt obligations as they become due. Insolvency exists, for example, where (i) the state-owned enterprise has failed to make required payments due to an inability to service the debt obligations; or (ii) the state-owned enterprise has filed for bankruptcy, has been determined by a court to be bankrupt or insolvent, or is subject to court supervision, for purposes of either reorganization or liquidation of the enterprise.

(16) A state-owned enterprise is "on the brink of insolvency" if it will likely be unable to meet its debt obligations at any point over the next 12 months. To determine whether a state-owned enterprise is on the brink of insolvency, primary consideration shall be given to opinions of independent credit rating agencies and independent accounting firms issued in the ordinary course of business, if available. To the extent relevant, additional factual evidence concerning the ability of the state-owned enterprise to meet its debt obligations may also be taken into account.

(17) With respect to Mexico, the obligations set out in Article 22.6.1, Article 22.6.2, and Article 22.6.3 (Non- Commercial Assistance) are subject to the additional provisions of Annex 22-F (Non-Commercial Assistance to Certain State Productive Enterprises).

(18) For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

(19) For the purposes of paragraphs 4 and 5, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

(20) The term "domestic industry" refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

(21) In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

(22) For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

Article 22.7. Adverse Effects

1. For the purposes of Article 22.6.4 and Article 22.6.5 (Non-Commercial Assistance), adverse effects arise if the effect of the non-commercial assistance is:

(a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial

assistance displaces or impedes from the Party's market imports of a like good of another Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;

(b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from:

(i) the market of another Party sales of a like good produced by an enterprise that is a covered investment in the territory of that other Party, or imports of a like good of any other Party, or

(ii) the market of a non-Party imports of a like good of another Party;

(c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:

(i) the market of a Party as compared with the price in the same market of imports of a like good of another Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression or lost sales in the same market, or

(ii) the market of a non-Party as compared with the price in the same market of imports of a like good of another Party, or significant price suppression, price depression or lost sales in the same market.

(d) that services supplied by a Party's state-owned enterprise that has received the non- commercial assistance displace or impede from the market of another Party a like service supplied by a service supplier of that other Party or any other Party; or

(e) a significant price undercutting by a service supplied in the market of another Party by a Party's state-owned enterprise that has received the non-commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of that other Party or any other Party, or significant price suppression, price depression or lost sales in the same market. (23)

2. For the purposes of paragraphs 1(a), 1(b), and 1 (d), the displacing or impeding of a good or service includes a case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" includes the following situations:

(a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;

(b) the market share of the good or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or

(c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

The change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, is at least one year.

3. For the purposes of paragraphs l(c) and 1(e), price undercutting includes a case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 must be made at the same level of trade and at comparable times, and due account must be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides before the signing of this Agreement shall be deemed not to cause adverse effects.

(23) The purchase or sale of shares, stock or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not, in and of itself, be construed to give rise to adverse effects as provided for in Article 22.7.1 (Adverse Effects). Consistent with Article 22.6.5 (Non- Commercial Assistance), if the state-owned enterprise provides equity capital to another state-owned enterprise, and the equity capital is a form of non-commercial assistance, then, depending on the facts, the production and sale of a good or the supply of a service by the recipient enterprise could give rise to adverse effects.

Article 22.8. Injury

1. For the purposes of Article 22.6.6 (Non-Commercial Assistance), the term "injury" means material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of that production on prices for like goods produced and sold by the domestic industry, and the effect of that production on the domestic industry producing like goods. (24)

2. With regard to the volume of production by the covered investment that has received non- commercial assistance, consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance must include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programs. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects of the non-commercial assistance, set out in paragraphs 2 and 3, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry must be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors that may be relevant in this respect include the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care. The change in circumstances that would create a situation in which non- commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors (25) and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

(24) The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel.

(25) In making a determination regarding the existence of a threat of material injury, a panel established pursuant to Chapter 31 (Dispute Settlement) should consider, among other things, such factors as: (i) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom; (ii) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales; (iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production; (iv) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and (v) inventories of like goods.

Article 22.9. Party-Specific Annexes

1. Article 22.4 (Non-Discriminatory Treatment and Commercial Considerations) and Article 22.6 (Non-Commercial Assistance) do not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies

that a Party lists in its Schedule to Annex IV in accordance with the terms of the Party's Schedule.

2. Article 22.4 (Non-Discriminatory Treatment and Commercial Considerations), Article 22.5 (Courts and Administrative Bodies), Article 22.6 (Non-Commercial Assistance), and Article 22.10 (Transparency) do not apply to a Party's state-owned enterprises or designated monopolies as set out in Annex 22-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies).

Article 22.10. Transparency

1. Each Party shall provide to the other Parties or publish on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement, and thereafter shall update the list annually.

2. Each Party shall promptly notify the other Parties or publish on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation.

3. On the written request of another Party, a Party shall promptly provide the following information in writing concerning a state-owned enterprise or a government monopoly, provided that the request includes a reasoned explanation of how the activites of the entity affect or could affect trade or investment between the Parties:

(a) the percentage of shares that the Party, its state enterprises, state-owned enterprises, or designated monopolies cumulatively own, and the percentage of votes 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 enterprises, state-owned enterprises, or designated monopolies hold, to the extent these rights are different from the rights attached to the general common shares of the entity;

(c) the government titles of any government official serving as an officer or member of the entity's board of directors;

(d) the entity's annual revenue and total assets over the most recent three year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's law; and

(f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of another Party, a Party shall promptly provide, in writing, information regarding any policy or program that the Party has adopted or maintains that provides for the provision of either non-commercial assistance or any equity capital (regardless of whether the equity infusion also constitutes non-commercial assistance) to its state-owned enterprises.

5. When a Party provides a response pursuant to paragraph 4, the information it provides must be sufficiently specific to enable the requesting Party to understand the operation of the policy or program and evaluate its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response that it provides contains the following information:

(a) the form of the non-commercial assistance provided under the policy or program, for example, grant or loan;

(b) the names of the government agencies, state enterprises, or state-owned enterprises providing the non-commercial assistance or equity capital and the names of the state-owned enterprises that have received or are eligible to receive the non- commercial assistance;

(c) the legal basis and policy objective of the policy or program providing for the non- commercial assistance or equity infusion;

(d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases if it is not possible to provide a per unit amount, the total amount of or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;

(e) with respect to services, the total amount of or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;

(f) with respect to policies or programs providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;

(g) with respect to policies or programs providing for non-commercial assistance in the form of the provision of goods or the

supply of services, the prices charged, if any, for those goods and services;

(h) with respect to policies or programs for the provision of equity capital, the amount invested, the number and a description of the shares received, and any assessment of the enterprise's financial health and prospects that is conducted with respect to the underlying investment decision;

(i) duration of the policy or program or any other time-limits attached to it; and

(j) statistical data permitting an assessment of the effects of the non-commercial assistance on trade or investment between the Parties.

6. In response to a request made pursuant to paragraph 4, if a Party considers that it has not adopted or does not maintain any policies or programs referred to in paragraph 4, it shall promptly provide a reasoned explanation of this in writing to the requesting Party.

7. If any relevant points in paragraph 5 have not been addressed in the written response, that Party shall provide a reasoned explanation of this in the written response.

8. The Parties recognize that the provision of information under paragraphs 5 and 7 does not prejudge the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party responds to a request for information under this Article, and informs the requesting Party that it considers certain information to be confidential, the Party shall provide a reasoned explanation for its determination. The requesting Party shall not disclose this information without the prior consent of the Party that provided it. To the maximum extent possible under its law, the Party should not consider the amount of the financial contribution associated with the non-commercial assistance or equity capital to be confidential.

Article 22.11. Technical Cooperation

The Parties shall, if appropriate and subject to available resources, engage in mutually decided upon technical cooperation activities, including:

(a) exchanging information regarding Parties' experiences in improving the corporate governance and operation of their state-owned enterprises;

(b) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and

(c) organizing international seminars, workshops or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises.

Article 22.12. Committee on State-Owned Enterprises and Designated Monopolies

1. The Parties hereby establish a Committee on State-owned Enterprises and Designated Monopolies (SOE Committee), composed of government representatives of each Party.

2. The SOE Committee's functions include:

(a) reviewing and considering the operation and implementation of this Chapter;

(b) at a Party's request, consulting on a matter arising under this Chapter;

(c) developing cooperative efforts, as appropriate, to promote the principles underlying the disciplines contained in this Chapter in the free trade area and to contribute to the development of similar disciplines in other regional and multilateral institutions in which two or more Parties participate; and

(d) undertaking other activities as the SOE Committee may decide.

3. The SOE Committee shall meet within one year after the date of entry into force of this Agreement, and at least annually thereafter, unless the Parties decide otherwise.

Article 22.13. Exceptions

1. Nothing in Article 22.4 (Non-Discriminatory Treatment and Commercial Considerations) or Article 22.6 (Non-Commercial

Assistance) shall be construed to:

(a) prevent the adoption or enforcement by a Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a national or global economic emergency, for the duration of that emergency.

2. Article 22.4.1 (Non-Discriminatory Treatment and Commercial Considerations) does not apply to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

(a) supports exports or imports, provided that these services are:

(i) not intended to displace commercial financing, or

(ii) offered on terms no more favorable than those that could be obtained for comparable financial services in the commercial market; (26)

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing, or

(ii) offered on terms no more favorable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to give rise to adverse effects under Article 22.6.4(b) (Non- Commercial Assistance) or Article 22.6.5(b), or under Article 22.6.4(c) or Article 22.6.5(c) if the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services: (27)

(a) supports exports or imports, provided that these services are: @ not intended to displace commercial financing, or

(ii) offered on terms no more favorable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing, or

(ii) offered on terms no more favorable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 22.6 (Non-Commercial Assistance) does not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise, or state-owned enterprise of the Party provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 22.4 (Non-Discriminatory Treatment and Commercial Considerations), Article 22.6 (Non-Commercial Assistance), Article 22.10 (Transparency), and Article 22.12 (Committee on State-Owned Enterprises and Designated Monopolies) do not apply with respect to a state- owned enterprise or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 22-A (Threshold Calculation). (28)

(26) In circumstances in which no comparable financial services are offered in the commercial market: (a) for the purposes of paragraphs 2(a)(ii), 2(b) Gi), 3(a)(i), and 3(b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of paragraphs 2(a)(i), 2(b)(i), 3(a)G@), and 3(b)@), the supply of the financial services is deemed not to be intended to displace commercial financing.

(27) For the purposes of this paragraph, in cases where the Party in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

(28) When a Party invokes this exception during consultations under Article 31.4 (Consultations), the consulting Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

Article 22.14. Further Negotiations

Within six months of the date of entry into force of this Agreement, the Parties shall begin further negotiations so as to extend the application of the disciplines in this Chapter in accordance with Annex 22-C (Further Negotiations).

Article 22.15. Process for Developing Information

Annex 22-B (Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies) applies in any dispute under Chapter 31 (Dispute Settlement) regarding a Party's conformity with Article 22.4 (Non-Discriminatory Treatment and Commercial Considerations) or Article 22.6 (Non-Commercial Assistance).

Chapter 23. LABOR

Article 23.1. Definitions

For the purposes of this Chapter:

ILO Declaration on Rights at Work means the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998);

labor laws means statutes and regulations, or provisions of statutes and regulations, of a Party that are directly related to the following internationally recognized labor rights:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labor;

(c) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) acceptable conditions of work with respect to minimum wages, (1) hours of work, and occupational safety and health;

statutes and regulations and statutes or regulations means: (2)

(a) for Mexico, Acts of Congress or regulations and provisions promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United Mexican States; and

(b) for the United States, Acts of Congress or regulations promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United States.

(1) For greater certainty, a Party's labor laws regarding "acceptable conditions of work with respect to minimum wages" include requirements under that Party's labor laws to provide wage-related benefit payments to, or on behalf of, workers, such as those for profit sharing, bonuses, retirement, and healthcare.

(2) For greater certainty, for each Party setting out a definition, which has a federal form of government, its definition provides coverage for substantially all workers.

Article 23.2. Statement of Shared Commitments

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration on Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization (2008).

2. The Parties recognize the important role of workers' and employers' organizations in protecting internationally recognized labor rights.

3. The Parties also recognize the goal of trading only in goods produced in compliance with this Chapter.

Article 23.3. Labor Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Rights at Work: (3) (4) (5)

(a) freedom of association (6) and the effective recognition of the right to collective bargaining; (7)

(b) the elimination of all forms of forced or compulsory labor;

(c) the effective abolition of child labor and, for the purposes of this Agreement, a prohibition on the worst forms of child labor; and

(d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(3) The obligations set out in this Article, as they relate to the ILO, refer only to the ILO Declaration on Rights at Work.

(4) A failure to comply with an obligation under paragraphs 1 or 2 must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(5) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

(6) For greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike.

(7) Annex 23-A (Worker Representation in Collective Bargaining in Mexico) sets out obligations with regard to worker representation in collective bargaining.

Article 23.4. Non-Derogation

The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labor laws. Accordingly, no Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations:

(a) implementing Article 23.3.1 (Labor Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or

(b) implementing Article 23.3.1 or Article 23.3.2 (Labor Rights), if the waiver or derogation would weaken or reduce adherence to a right set out in Article 23.3.1 (Labor Rights), or to a condition of work referred to in Article 23.3.2 (Labor

Rights), in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory;

in a manner affecting trade or investment between the Parties. (8) (9)

(8) For greater certainty, a waiver or derogation is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(9) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 23.5. Enforcement of Labor Laws

1. No Party shall fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction (10) in a manner affecting trade or investment between the Parties (11) (12) after the date of entry into force of this Agreement.

2. Each Party shall promote compliance with its labor laws through appropriate government action, such as by:

(a) appointing and training inspectors;

(b) monitoring compliance and investigating suspected violations, including through unannounced on-site inspections, and giving due consideration to requests to investigate an alleged violation of its labor laws;

(c) seeking assurances of voluntary compliance;

(d) requiring record keeping and reporting;

(e) encouraging the establishment of labor-management committees to address labor regulation of the workplace;

(f) providing or encouraging mediation, conciliation, and arbitration services;

(g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor laws; and

(h) implementing remedies and sanctions imposed for noncompliance with its labor laws, including timely collection of fines and reinstatement of workers.

3. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions with regard to the allocation of enforcement resources between labor enforcement activities among the fundamental labor rights and acceptable conditions of work enumerated in Article 23.3.1 and Article 23.3.2 (Labor Rights), provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

(10) For greater certainty, a "sustained or recurring course of action or inaction" is "sustained" if the course of action or inaction is consistent or ongoing, and is "recurring" if the course of action or inaction occurs periodically or repeatedly and when the occurrences are related or the same in nature. A course of action or inaction does not include an isolated instance or case.

(11) For greater certainty, a "course of action or inaction" is "in a manner affecting trade or investment between the Parties" if the course involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(12) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 23.6. Forced or Compulsory Labor

1. The Parties recognize the goal of eliminating all forms of forced or compulsory labor, including forced or compulsory child labor. Accordingly, each Party shall prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.

2. To assist in the implementation of paragraph 1, the Parties shall establish cooperation for the identification and movement of goods produced by forced labor as provided for under Article 23.12.5(c) (Cooperation).

Article 23.7. Violence Against Workers

The Parties recognize that workers and labor organizations must be able to exercise the rights set out in Article 23.3 (Labor Rights) in a climate that is free from violence, threats, and intimidation, and the imperative of governments to effectively address incidents of violence, threats, and intimidation against workers. Accordingly, no Party shall fail to address violence or threats of violence against workers, directly related to exercising or attempting to exercise the rights set out in Article 23.3 (Labor Rights), in a manner affecting trade or investment between the Parties. (13) (14)

(13) For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(14) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 23.8. Migrant Workers

The Parties recognize the vulnerability of migrant workers with respect to labor protections. Accordingly, in implementing Article 23.3 (Labor Rights), each Party shall ensure that migrant workers are protected under its labor laws, whether they are nationals or non-nationals of the Party.

Article 23.9. Discrimination In the Workplace

The Parties recognize the goal of eliminating discrimination in employment and occupation, and support the goal of promoting equality of women in the workplace. Accordingly, each Party shall implement policies (15) that it considers appropriate to protect workers against employment discrimination on the basis of sex (including with regard to sexual harassment), pregnancy, sexual orientation, gender identity, and caregiving responsibilities; provide job-protected leave for birth or adoption of a child and care of family members; and protect against wage discrimination.

Article 23.10. Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labor laws, including by ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available.

2. Each Party shall ensure that a person with a recognized interest under its law in a particular matter has appropriate access to tribunals for the enforcement of its labor laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals, or labor tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labor laws:

(a) are fair, equitable and transparent;

(b) comply with due process of law;

(c) do not entail unreasonable fees or time limits or unwarranted delay; and

(d) that any hearings in these proceedings are open to the public, except where the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that:

(a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(b) final decisions on the merits of the case:

(i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard,

(ii) state the reasons on which they are based, and

(iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.

5. Each Party shall provide, as appropriate, that parties to these proceedings have the right to seek review and, if warranted, correction of decisions issued in these proceedings.

6. Each Party shall ensure that tribunals that conduct or review these proceedings are impartial and independent.

7. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under its labor laws and that these remedies are executed in a timely manner.

8. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.

9. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

10. Each Party shall ensure that other types of proceedings within its labor bodies for the implementation of its labor laws:

(a) are fair and equitable;

(b) are conducted by officials who meet appropriate guarantees of impartiality;

(c) do not entail unreasonable fees or time limits or unwarranted delay; and

(d) document and communicate decisions to persons directly affected by these proceedings.

Article 23.11. Public Submissions

1, Each Party, through its contact point designated under Article 23.15 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

2. Each Party shall:

(a) consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate; and

(b) make the submission and the results of its consideration available to the other Parties and the public, as appropriate, ina timely manner.

3. A Party may request from the person or organization that made the submission additional information that is necessary to consider the substance of the submission.

Article 23.12. Cooperation

1. The Parties recognize the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles and rights stated in the ILO Declaration on Rights at Work.

2. The Parties may, commensurate with the availability of resources, cooperate through:

(a) exchanging of information and sharing of best practices on issues of common interest, including through seminars, workshops, and online fora;

(b) study trips, visits, and research studies to document and study policies and practices;

(c) collaborative research and development related to best practices in subjects of mutual interest;

(d) specific exchanges of technical expertise and assistance, as appropriate; and

(e) other forms as the Parties may decide.

3. In undertaking cooperative activities, the Parties shall consider each Party's priorities and complementarity with initiatives in existence, with the aim to achieve mutual benefits and measurable labor outcomes.

4. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities.

5. The Parties may develop cooperative activities in the following areas:

(a) labor laws and practices, including the promotion and effective implementation of the principles and rights as stated in the ILO Declaration on Rights at Work;

(b) labor laws and practices related to compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor;

(c) identification and movement of goods produced by forced labor;

(d) combatting forced labor and human trafficking, including on fishing vessels;

(e) addressing violence against workers, including for trade union activity;

(f) occupational safety and health, including the prevention of occupational injuries and illnesses;

(g) institutional capacity of labor administrative and judicial bodies;

(h) labor inspectorates and inspection systems, including methods and training to improve the level and efficiency of labor law enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws;

(i) remuneration systems and mechanisms for compliance with labor laws pertaining to hours of work, minimum wages and overtime, and employment conditions;

(j) addressing gender-related issues in the field of labor and employment, including:

(i) elimination of discrimination on the basis of sex in respect of employment, occupation, and wages,

(ii) developing analytical and enforcement tools related to equal pay for equal work or work of equal value,

(iii) promotion of labor practices that integrate and retain women in the job market, and building the capacity and skills of women workers, including on workplace challenges and in collective bargaining,

(iv) consideration of gender issues related to occupational safety and health and other workplace practices, including advancement of child care, nursing mothers, and related policies and programs, and in the prevention of occupational injuries and illnesses, and

(v) prevention of gender-based workplace violence and harassment;

(k) promotion of productivity, innovation, competitiveness, training and human capital development in workplaces, particularly in respect to SMEs;

(l) addressing the opportunities of a diverse workforce, including:

(i) promotion of equality and elimination of employment discrimination in the areas of age, disability, race, ethnicity, religion, sexual orientation, gender identity, and other characteristics not related to merit or the requirements of employment, and

(ii) promotion of equality, elimination of employment discrimination, and protection of migrant workers and other vulnerable workers, including low-waged, casual, or temporary workers;

(m) collection and use of labor statistics, indicators, methods, and procedures, including on the basis of sex;

(n) social protection issues, including workers' compensation in case of occupational injury or illness, pension systems, and employment assistance schemes;

(o) labor relations, including forms of cooperation and dispute resolution to improve labor relations among workers, employers, and governments;

(p) apprenticeship programs;

(q) social dialogue, including tripartite consultation and partnership;

(r) with respect to labor relations in multi-national enterprises, promoting information sharing and dialogue related to conditions of employment by enterprises operating in two or more Parties with representative worker organizations in each of the cooperating Parties; and

(s) other areas as the Parties may decide.

6. The Parties may establish cooperative arrangements with the ILO or other international and regional organizations to draw on their expertise and resources to further the purposes of this Chapter.

Article 23.13. Cooperative Labor Dialogue

1. A Party may request dialogue with another Party on any matter arising under this Chapter at any time by delivering a written request to the contact point that the other Party has designated under Article 23.15 (Contact Points).

2. The requesting Party shall include information that is specific and sufficient to enable the receiving Party to respond, including identification of the matter at issue, an indication of the basis of the request under this Chapter and, when relevant, how trade or investment between the Parties is affected.

3. Unless the requesting and receiving Parties (the dialoguing Parties) decide otherwise, dialogue must commence within 30 days of a Party's receipt of a request for dialogue. The dialoguing Parties shall engage in dialogue in good faith. As part of the dialogue, the dialoguing Parties shall provide a means for receiving and considering the views of interested persons on the matter.

4. Dialogue may be held in person or by any technological means available to the dialoguing Parties.

5. The dialoguing Parties shall address all the issues raised in the request. If the dialoguing Parties resolve the matter, they shall document the outcome, including, if appropriate, specific steps and timelines that they have decided upon. The dialoguing Parties shall make the outcome available to the public, unless they decide otherwise.

6. In developing an outcome pursuant to paragraph 5, the dialoguing Parties should consider all available options and may jointly decide on a course of action they consider appropriate, including:

(a) the development and implementation of an action plan in a form that they find satisfactory, which may include specific and verifiable steps, such as on labor inspection, investigation, or compliance action, and appropriate timeframes;

(b) the independent verification of compliance or implementation by individuals or entities, such as the ILO, chosen by the dialoguing Parties; and

(c) appropriate incentives, such as cooperative programs and capacity building, to encourage or assist the dialoguing Parties to identify and address labor matters.

Article 23.14. Labor Council

1. The Parties hereby establish a Labor Council composed of senior governmental representatives at the ministerial or other level from trade and labor ministries, as designated by each Party.

2. The Labor Council shall meet within one year of the date of entry into force of this Agreement and thereafter every two years, unless the Parties decide otherwise.

3. The Labor Council may consider any matter within the scope of this Chapter and perform other functions as the Parties may decide.

4. In conducting its activities, including meetings, the Labor Council shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter. If practicable, meetings will include a public session or other means for Council members to meet with the public to discuss matters relating to the implementation of this Chapter.

5. During the fifth year after the date of entry into force of this Agreement, or as otherwise decided by the Parties, the Labor

Council shall review the operation and effectiveness of this Chapter and thereafter may undertake subsequent reviews as decided by the Parties.

6. Labor Council decisions and reports shall be made by consensus and be made publicly available, unless the Council decides otherwise.

7. The Labor Council shall issue a joint summary report or statement on its work at the end of each Council meeting.

Article 23.15. Contact Points

1. Each Party shall designate, within 60 days of the date of entry into force of this Agreement, an office or official within its labor ministry or equivalent entity as a contact point to address matters related to this Chapter. Each Party shall notify the other Parties in writing promptly in the event of a change to its contact point.

2. The contact points shall:

(a) facilitate regular communication and coordination between the Parties, including responding to requests for information and providing sufficient information to enable a full examination of matters related to this Chapter;

(b) assist the Labor Council;

(c) report to the Labor Council, as appropriate;

(d) act as a channel for communication with the public in their respective territories; and

(e) work together, including with other appropriate agencies of their governments, to develop and implement cooperative activities, guided by the priorities of the Labor Council, areas of cooperation identified in Article 23.12.5 (Cooperation), and the needs of the Parties.

3. Contact points may communicate and coordinate activities in person or through electronic or other means of communication.

4. Each Party's contact point, in carrying out its responsibilities under this Chapter, shall regularly consult and coordinate with its trade ministry.

Article 23.16. Public Engagement

Each Party shall establish or maintain, and consult with, a national labor consultative or advisory body or similar mechanism, for members of its public, including representatives of its labor and business organizations, to provide views on matters regarding this Chapter.

Article 23.17. Labor Consultations

1. The Parties shall make every effort through cooperation and dialogue to arrive at a mutually satisfactory resolution of any matter arising under this Chapter.

2. A Party (the requesting Party) may request labor consultations with another Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter.

3. A third Party that considers it has a substantial interest in the matter may participate in the labor consultations by notifying the other Parties (the consulting Parties) in writing through their respective contact points, no later than seven days after the date of delivery of the request for labor consultations. The third Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties decide otherwise, they shall enter into labor consultations no later than 30 days after the date of delivery of the request.

5. The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through labor consultations, which may include appropriate cooperative activities. The consulting Parties may request advice from independent experts chosen by the consulting Parties to assist them.

6. Ministerial Labor Consultations: If the consulting Parties have failed to resolve the matter, a consulting Party may request

that the relevant Ministers or their designees of the consulting Parties convene to consider the matter at issue by delivering a written request to the other consulting Party through its contact point. The Ministers of the consulting Parties shall convene promptly after the date of receipt of the request, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts chosen by the consulting Parties to assist them, and having recourse to procedures such as good offices, conciliation, or mediation.

7. If the consulting Parties are able to resolve the matter, they shall document the outcome, including, if appropriate, specific steps and timelines decided upon. The consulting Parties shall make the outcome available to the other Party and to the public, unless they decide otherwise.

8. If the consulting Parties fail to resolve the matter within 30 days after the date of receipt of a request for Labor consultations under paragraph 2, or any other period as the consulting Parties may agree, the requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel).

9. Labor consultations shall be confidential and without prejudice to the rights of a Party in another proceeding.

10. Labor consultations pursuant to this Article may be held in person or by any technological means available to the consulting Parties. If the labor consultations are held in person, they must be held in the capital of the Party to which the request for labor consultations was made, unless the consulting Parties decide otherwise.

11. In labor consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

12. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

13. A Party may have recourse to labor consultations under this Article without prejudice to the commencement or continuation of Cooperative Labor Dialogue under Article 23.13 (Cooperative Labor Dialogue).

ANNEX 23-A. WORKER REPRESENTATION IN COLLECTIVE BARGAINING IN MEXICO

1. Mexico shall adopt and maintain the measures set out in paragraph 2, which are necessary for the effective recognition of the right to collective bargaining, given that the Mexican government incoming in December 2018 has confirmed that each of these provisions is within the scope of the mandate provided to the government by the people of Mexico in the elections.

2. Mexico shall:

(a) Provide in its labor laws the right of workers to engage in concerted activities for collective bargaining or protection and to organize, form, and join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognized union.

(b) Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements and the recognition of unions, through legislation establishing:

(i) an independent entity for conciliation and registration of unions and collective bargaining agreements, and

(ii) independent Labor Courts for the adjudication of labor disputes.

The legislation shall provide for the independent entity for conciliation and registration to have the authority to issue appropriate sanctions against those who violate its orders. The legislation also shall provide that all decisions of the independent entity are subject to appeal to independent courts, and that officials of the independent entity who delay, obstruct, or influence the outcome of any registration process in favor or against a party involved, will be subject to sanctions under Article 48 of the Federal Labor Law (Ley Federal del Trabajo) and Articles 49, 52, 57, 58, 61, 62 and other applicable provisions of the General Law of Administrative Responsibilities (Ley General de Responsabilidades Administrativas).

(c) Provide in its labor laws, through legislation in accordance with Mexico's Constitution (Constitución Política de los Estados Unidos Mexicanos), for an effective system to verify that elections of union leaders are carried out through a personal, free, and secret vote of union members.

(d) Provide in its labor laws that union representation challenges are carried out by the Labor Courts through a secret ballot vote, and are not subject to delays due to procedural challenges or objections, including by establishing clear time limits and procedures, consistent with Mexico's obligations under Article 23.10.3(c) and Article 23.10.10(c) (Public Awareness and

Procedural Guarantees).

(e) Adopt legislation in accordance with Mexico's Constitution (ConstituciÃ©n Politica de los Estados Unidos Mexicanos), requiting:

(i) verification by the independent entity that collective bargaining agreements meet legal requirements related to worker support in order for them to be registered and take legal effect; and

(ii) for the registration of an initial collective bargaining agreement, majority support, through exercise of a personal, free, and secret vote of workers covered by the agreement and effective verification by the independent entity, through, as justified under the circumstances, documentary evidence (physical or electronic), direct consultations with workers, or on-site inspections that:

(A) the worksite is operational,

(B) a copy of the collective bargaining agreement was made readily accessible to individual workers prior to the vote, and

(C) a majority of workers covered by the agreement demonstrated support for the agreement through a personal, free, and secret vote.

(f) Adopt legislation in accordance with Mexico's Constitution (Constitución Política de los Estados Unidos Mexicanos), which provides that, in future revisions to address salary and work conditions, all existing collective bargaining agreements shall include a requirement for majority support, through the exercise of personal, free, and secret vote of the workers covered by those collective bargaining agreements.

The legislation shall also provide that all existing collective bargaining agreements shall be revised at least once during the four years after the legislation goes into effect. The legislation shall not imply the termination of any existing collective bargaining agreements as a consequence of the expiration of the term indicated in this paragraph, as long as a majority of the workers covered by the collective bargaining agreement demonstrate support for such agreement through a personal, free, and secret vote.

The legislation shall also provide that the revisions must be deposited with the independent entity. In order to deposit the future revisions, the independent entity shall effectively verify, through, as justified under the circumstances, documentary evidence (physical or electronic), direct consultation with workers, or on-site inspections that:

(i) a copy of the revised collective bargaining agreement was made readily accessible to the workers covered by the collective bargaining agreement prior to the vote, and

(ii) a majority of workers covered by the revised agreement demonstrated support for that agreement through a personal, free, and secret vote.

(g) Provide in its labor laws:

(i) that each collective bargaining agreement negotiated by a union and a union's governing documents are made available in a readily accessible form to all workers covered by the collective bargaining agreement, through enforcement of Mexico's General Law on Transparency and Access to Public Information (Ley General de Transparencia y Acceso a la Informacion Publica), and

(ii) for the establishment of a centralized website that provides public access to all collective bargaining agreements in force and that is operated by an independent entity that is in charge of the registration of collective bargaining agreements.

3. It is the expectation of the Parties that Mexico shall adopt legislation described above before January 1, 2019. It is further understood that entry into force of this Agreement may be delayed until such legislation becomes effective.

Chapter 24. ENVIRONMENT

Article 24.1. Definitions

For the purposes of this Chapter:

environmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, (1) including endangered species, their habitat, and specially protected natural areas, (2)

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources; and

statute or regulation means:

(a) for Canada, an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government;

(b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government; and

(c) for the United States, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the central level of government.

(1) The Parties recognize that "protection or conservation" may include the protection or conservation of biological diversity.

(2) For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its law.

Article 24.2. Scope and Objectives

1. The Parties recognize that a healthy environment is an integral element of sustainable development and recognize the contribution that trade makes to sustainable development.

2. The objectives of this Chapter are to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development.

3. Taking account of their respective national priorities and circumstances, the Parties recognize that enhanced cooperation to protect and conserve the environment and the sustainable use and management of their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance, support implementation of international environmental agreements to which they are a party, and complement the objectives of this Agreement.

4. The Parties recognize that the environment plays an important role in the economic, social, and cultural well-being of indigenous peoples and local communities, and acknowledge the importance of engaging with these groups in the long-term conservation of the environment.

5. The Parties further recognize that it is inappropriate to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 24.3. Levels of Protection

1. The Parties recognize the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt, or modify its environmental laws and policies accordingly.

2. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection, and shall strive to continue to improve its respective levels of environmental protection.

Article 24.4. Enforcement of Environmental Laws

1. No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction (3) in a manner affecting trade or investment between the Parties, (4) (5) after the date of entry into force of this Agreement.

2. The Parties recognize that each Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory, and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws a Party is in compliance with paragraph 1 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

3. Without prejudice to Article 24.3.1 (Levels of Protection), the Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

(3) For greater certainty, a "sustained or recurring course of action or inaction" is "sustained" if the course of action or inaction is consistent or ongoing, and is "recurring" if the course of action or inaction occurs periodically or repeatedly and when the occurrences are related or the same in nature. A course of action or inaction does not include an isolated instance or case.

(4) For greater certainty, a "course of action or inaction" is "in a manner affecting trade or investment between the Parties" if the course involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(5) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 24.5. Public Information and Participation

1. Each Party shall promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.

2. Each Party shall provide for the receipt and consideration of written questions or comments from persons of that Party regarding its implementation of this Chapter. Each Party shall respond in a timely manner to these questions or comments in writing and in accordance with domestic procedures, and make the questions or comments and the responses available to the public, for example by posting on an appropriate public website.

3, Each Party shall make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views on matters related to the implementation of this Chapter. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

Article 24.6. Procedural Matters

1. Each Party shall ensure that an interested person may request that the Party's competent authorities investigate alleged violations of its environmental laws, and that the competent authorities give those requests due consideration, in accordance with its law.

2. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, or judicial proceedings for the enforcement of the Party's environmental laws, and the right to seek appropriate remedies or sanctions for violations of those laws.

3. Each Party shall ensure that administrative, quasi-judicial, or judicial proceedings for the enforcement of the Party's

environmental laws are available under its law and that those proceedings are fair, equitable, transparent, and comply with due process of law, including the opportunity for parties to the proceedings to support or defend their respective positions. The Parties recognize that these proceedings should not be unnecessarily complicated nor entail unreasonable fees or time limits.

4. Each Party shall provide that any hearings in these proceedings are conducted by impartial and independent persons who do not have an interest in the outcome of the matter. Hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable law.

5. Each Party shall provide that final decisions on the merits of the case in these proceedings are:

(a) in writing and if appropriate state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, in accordance with its law, to the public; and

(c) based on information or evidence presented by the parties or other sources, in accordance with its law.

6. Each Party shall also provide, as appropriate, that parties to these proceedings have the right, in accordance with its law, to seek review and, if warranted, correction or redetermination, of final decisions in such proceedings.

7. Each Party shall provide appropriate sanctions or remedies for violations of its environmental laws and shall ensure that it takes account of relevant factors when establishing sanctions or remedies, which may include the nature and gravity of the violation, damage to the environment, and any economic benefit derived by the violator.

Article 24.7. Environmental Impact Assessment

1. Each Party shall maintain appropriate procedures for assessing the environmental impacts of proposed projects that are subject to an action by that Party's central level of government that may cause significant effects on the environment with a view to avoiding, minimizing, or mitigating adverse effects.

2. Each Party shall ensure that such procedures provide for the disclosure of information to the public and, in accordance with its law, allow for public participation.

Article 24.8. Multilateral Environmental Agreements (6) (7)

1. The Parties recognize the important role that multilateral environmental agreements can play in protecting the environment and as a response of the international community to global or regional environmental problems.

2. Each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

3. The Parties commit to consult and cooperate as appropriate with respect to environmental issues of mutual interest, in particular trade-related issues, pertaining to relevant multilateral environmental agreements. This includes exchanging information on the implementation of multilateral environmental agreements to which a Party is party; ongoing negotiations of new multilateral environmental agreements; and, each Party's respective views on becoming a party to additional multilateral environmental agreements.

4. Each Party shall adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfill its respective obligations under the following multilateral environmental agreements ("covered agreements"): (8)

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

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;

(c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;

(d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;

(e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;

(f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and

(g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949.

5. Pursuant to Article 34.3 (Amendments), the Parties may agree in writing to modify paragraph 4 to include any amendment to an agreement referred to therein, and any other environmental or conservation agreement.

(6) A violation of Article 24.8.4 must be in a manner affecting trade or investment between the Parties, For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party. For greater certainty, a Party's compliance with its respective obligations under a covered agreement shall only be subject to Article 24.29 (Environment Consultations) or Article 24.32 (Dispute Settlement) under this Agreement if the complaining Party is a party to the relevant covered agreement.

(7) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

(8) For purposes of this paragraph: (1) "covered agreements" shall encompass the multilateral environmental agreements provided herein and those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which the Party is party; and (2) a Party's "obligations" shall be interpreted to reflect, inter alia, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

Article 24.9. Protection of the Ozone Layer

1. The Parties recognize that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol. (9) (10) (11), (12).

2. The Parties also recognize the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the protection of the ozone layer. Each Party shall make publicly available appropriate information about its programs and activities, including cooperative programs that are related to ozone layer protection.

3. Consistent with Article 24.25 (Environmental Cooperation), the Parties shall cooperate to address matters of mutual interest related to such substances. Cooperation may include, exchanging information and experiences in areas related to:

(a) environmentally friendly alternatives to such substances; (b) refrigerant management practices, policies and programs; (c) methodologies for stratospheric ozone measurements; and

(d) combatting illegal trade in such substances.

(9) For greater certainty, this provision pertains to substances controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987 (Montreal Protocol), and any existing and future amendments to the Montreal Protocol to which the Parties are parties.

(10) A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 24-A implementing its obligations under the Montreal Protocol or adopts any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

(11) If compliance with this provision is not established pursuant to footnote 10, a violation of this provision must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(12) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 24.10. Protection of the Marine Environment from Ship Pollution

1. The Parties recognize the importance of protecting and preserving the marine environment. To that end, each Party shall take measures to prevent the pollution of the marine environment from ships. (13) (14) (15) (16)

2. The Parties also recognize the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures to prevent the pollution of the marine environment from ships. Each Party shall make publicly available appropriate information about its programs and activities, including cooperative programs, that are related to the prevention of pollution of the marine environment from ships.

3. Consistent with Article 24.25 (Environmental Cooperation), the Parties shall cooperate to address matters of mutual interest with respect to pollution of the marine environment from ships. Areas of cooperation may include:

(a) accidental pollution from ships;

(b) pollution from routine operations of ships;

(c) deliberate pollution from ships;

(d) development of technologies to minimise ship-generated waste;

(e) emissions from ships;

(f) adequacy of port waste reception facilities;

(g) increased protection in special geographic areas; and

(h) enforcement measures including notifications to flag States and, as appropriate, by port States.

(13) For greater certainty, this provision pertains to pollution regulated by the International Convention for the Prevention of Pollution from Ships, done at London, November 2, 1973, as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, done at London, February 17, 1978, and the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 relating thereto, done at London, September 26, 1997 (MARPOL Convention), and any existing and future amendments to the MARPOL Convention, to which the Parties are parties.

(14) A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 24-B implementing its obligations under MARPOL Convention, or adopts any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

(15) If compliance with this provision is not established pursuant to footnote 14, a violation of this provision must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

(16) For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 24.11. Air Quality

1. The Parties recognize that air pollution is a serious threat to public health, ecosystem integrity, and sustainable development and contributes to other environmental problems; and note that reducing certain air pollutants can provide multiple benefits.

2. Noting that air pollution can travel long distances and impact each Party's ability to achieve its air quality objectives, the Parties recognize the importance of reducing both domestic and transboundary air pollution, and that cooperation can be beneficial in achieving these objectives.

3. The Parties further recognize the importance of public participation and transparency in the development and implementation of measures to prevent air pollution and in ensuring access to air quality data. Accordingly, each Party shall make air quality data and information about its associated programs and activities publicly available in accordance with Article 32.7 (Disclosure of Information), and shall seek to ensure these data and information are easily accessible and understandable to the public.

4. The Parties recognize the value of harmonizing air quality monitoring methodologies.

5. The Parties recognize the importance of international agreements and other efforts to improve air quality and control air pollutants, including those that have the potential for long- range transport.

6. Recognizing that the Parties have made significant progress to address air pollution in other fora, and consistent with Article 24.25 (Environmental Cooperation), the Parties shall cooperate to address matters of mutual interest with respect to air quality. Cooperation may include exchanging information and experiences in areas related to:

(a) ambient air quality planning;

(b) modeling and monitoring, including spatial distribution of main sources and their emissions;

(c) measurement and inventory methodologies for air quality and emissionsâ measurements; and

(d) reduction, control, and prevention technologies and practices.

Article 24.12. Marine Litter

1. The Parties recognize the importance of taking action to prevent and reduce marine litter, including plastic litter and microplastics, in order to preserve human health and marine and coastal ecosystems, prevent the loss of biodiversity, and mitigate marine litter's costs and impacts.

2. Recognizing the global nature of the challenge of marine litter, each Party shall take measures to prevent and reduce marine litter.

3. Recognizing that the Parties are taking action to address marine litter in other fora, consistent with Article 24.25 (Environmental Cooperation), the Parties shall cooperate to address matters of mutual interest with respect to combatting marine litter, such as addressing land and sea-based pollution, promoting waste management infrastructure, and advancing efforts related to abandoned, lost, or otherwise discarded fishing gear.

Article 24.13. Corporate Social Responsibility and Responsible Business Conduct

1. The Parties recognize the importance of promoting corporate social responsibility and responsible business conduct.

2. Each Party shall encourage enterprises organized or constituted under its laws, or operating in its territory, to adopt and implement voluntary best practices of corporate social responsibility that are related to the environment, such as those in internationally recognized standards and guidelines that have been endorsed or are supported by that Party, to strengthen coherence between economic and environmental objectives.

Article 24.14. Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognize that flexible, voluntary mechanisms, for example, voluntary auditing and reporting, market-based mechanisms, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement domestic regulatory measures. The Parties also recognize that those mechanisms should be designed in a manner that maximizes their environmental benefits and avoids the creation of unnecessary barriers to trade.

2. Therefore, in accordance with its laws, regulations, or policies and to the extent it considers appropriate, each Party shall encourage:

(a) the use of flexible, voluntary mechanisms to protect the environment and natural resources, such as through the conservation and sustainable use of those resources, in its territory; and

(b) its relevant authorities, private sector, non-governmental organizations, and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve such criteria.

3. Further, if private sector entities or non-governmental organizations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party should encourage those entities and organizations to develop voluntary mechanisms that, among other things:

(a) are truthful, are not misleading, and take into account relevant scientific and technical information;

(b) are based on relevant international standards, recommendations, guidelines, or best practices, as appropriate;

(c) promote competition and innovation; and

(d) do not treat a product less favorably on the basis of origin.

Article 24.15. Trade and Biodiversity

1. The Parties recognize the importance of conservation and sustainable use of biological diversity, as well as the ecosystem services it provides, and their key role in achieving sustainable development.

2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.

3. The Parties recognize the importance of respecting, preserving, and maintaining knowledge and practices of indigenous peoples and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

4. The Parties recognize the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognize that some Parties may require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, if access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

5. The Parties also recognize 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. Each Party shall make publicly available information about its programs and activities, including cooperative programs, related to the conservation and sustainable use of biological diversity.

6. Consistent with Article 24.25 (Environmental Cooperation), the Parties shall cooperate to address matters of mutual interest. Cooperation may include exchanging information and experiences in areas related to:

(a) the conservation and sustainable use of biological diversity;

(b) mainstreaming conservation and sustainable use of biological diversity across relevant sectors;

(c) the protection and maintenance of ecosystems and ecosystem services; and

(d) access to genetic resources and the sharing of benefits arising from their utilization.

Article 24.16. Invasive Alien Species

1. The Parties recognize 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. The Parties also recognize that the prevention, detection, control and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.

2. Accordingly, the Environment Committee established under Article 24.26.2 (Environment Committee and Contact Points) shall coordinate with the Committee on Sanitary and Phytosanitary Measures established under Article 9.17 (Committee on Sanitary and Phytosanitary Measures) to identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control, and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

Article 24.17. Marine Wild Capture Fisheries (17)

1. The Parties acknowledge their role as major consumers, producers, and traders of fisheries products and the importance of the marine fisheries sectors to their development and to the livelihoods of fishing communities, including those engaged in artisanal, small scale, and indigenous fisheries. The Parties also recognize the need for individual and collective action within international fora to address the urgent resource problems resulting from overfishing and unsustainable utilization of fisheries resources.

2. Accordingly, the Parties recognize the importance of taking measures aimed at the conservation and the sustainable management of fisheries and the contribution of those measures to providing environmental, economic and social opportunities for present and future generations. The Parties also recognize the importance of promoting and facilitating trade in sustainably managed and legally harvested fish and fish products, while ensuring that trade in these products is not subject to unnecessary or unjustifiable barriers to trade, given the negative effect that such barriers can have on the well-being of their communities who depend upon the fishing industry for their livelihood.

3. If an importing Party is considering adopting trade restrictive measures for fish or fish products in order to protect or conserve fish or other marine species, the Parties recognize the importance that these measures be: (18)

(a) based on the best scientific evidence available, as applicable, that establish a connection between the products affected by the measure and the species being protected or conserved;

(b) tailored to the conservation objective; and

(c) implemented after the importing Party has:

(i) consulted with the exporting Party, in an effort to resolve the issue cooperatively; and

(ii) provided a reasonable opportunity for the exporting Party to take appropriate measures to address the issue.

4. The Parties shall cooperate with, and, if appropriate, in, Regional Fisheries Management Organizations (RFMOs) and Regional Fisheries Management Arrangements (RFMAs), in which the Parties are members, observers, or cooperating non-contracting parties, with the aim of achieving good governance, including by advocating for science-based decisions and compliance with those decisions in these organizations and arrangements.

(17) For greater certainty, Article 24.17 (Marine Wild Capture Fisheries), Article 24.18 (Sustainable Fisheries Management), Article 24.19 (Conservation of Marine Species), Article 24.20 (Fisheries Subsidies), and Article 24,21 (illegal, Unreported, and Unregulated (UU) Fishing) do not apply with respect to aquaculture.

(18) For greater certainty, this paragraph is without prejudice to any rights or obligations of the Parties relating to the adoption or application of trade restrictive measures for fish and fish products.

Article 24.18. Sustainable Fisheries Management

1. In furtherance of the objectives of conservation and sustainable management, each Party shall seek to operate a fisheries management system that regulates marine wild capture fishing and that is designed to:

(a) prevent overfishing and overcapacity through appropriate measures, such as limited entry, time, area, and other restrictions, and the setting and enforcement of catch or effort limits;

(b) reduce bycatch of non-target species and juveniles, including through the regulation of, and implementation of measures associated with, fishing gear and methods that result in bycatch and the regulation of fishing in areas where bycatch is likely to occur;

(c) promote the recovery of overfished stocks for all marine fisheries in which that Party's persons conduct fishing activities; and

(d) protect marine habitat by cooperating, as appropriate, to prevent or mitigate significant adverse impacts from fishing.

2. Further, each Party shall adopt or maintain measures:

(a) to prevent the use of poisons and explosives for the purpose of commercial fish harvesting; and

(b) designed to prohibit the practice of shark finning.

3. Each Party shall base its fisheries management system on the best scientific evidence available and on internationally recognized 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. (19)

(19) These instruments include, as they may apply, the United Nations Convention on Law of the Sea (UNCLOS), done at Montego Bay, December 10, 1982; the United Nations 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, done at New York, December 4, 1995 (UN Fish Stocks Agreement); the FAO Code of Conduct for Responsible Fisheries; the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), done at Rome, November 24, 1993; the 2001 FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (UU IPOA), adopted at Rome, February 23, 2001; and the 2009 Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing (Port State Measures Agreement), done at Rome, November 22, 2009.

Article 24.19. Conservation of Marine Species

1. Each Party shall promote the long-term conservation of sharks, sea turtles, seabirds, and marine mammals through the implementation and effective enforcement of conservation and management measures. Such measures shall include:

(a) studies and assessments of the impact of fisheries operations on non-target species and their marine habitats, including through collection of species-specific data for non-target species and estimates of their bycatch, as appropriate;

(b) gear-specific studies and data collection on impacts on non-target species and on the efficacy of management measures to reduce those adverse impacts, as appropriate;

(c) measures to avoid, mitigate, or reduce bycatch of non-target species in fisheries, including appropriate measures pertaining to the use of bycatch mitigation devices, modified gear, or other techniques to reduce the impact of fishing operations on these species; and

(d) cooperation on national and regional bycatch reduction measures, such as measures applicable to commercial fisheries pertaining to transboundary stocks of non-target species.

2. Each Party shall prohibit the killing of great whales (20) for commercial purposes unless authorized in a multilateral treaty to which the Party is a party. (21)

(20) Great whales are the following 16 species: Balaena mysticetus, Eubalaena glacialis, Eubalaena japonica, Eubalaena australis, Eschrichtius robustus, Balaenoptera musculus, Balaenoptera physalus, Balaenoptera borealis, Balaenoptera edeni, Balaenoptera acutorostrata, Balaenoptera bonaerensis, Balaenoptera omurai, Megaptera novaeangliae, Caperea marginata, Physeter macrocephalus, and Hyperoodon ampullatus.

(21) For greater certainty, the Parties understand that paragraph 2 does not apply to whaling by indigenous peoples in accordance with a Party's law, including for Canada the legal obligations recognized and affirmed by section 35 of the Constitution Act, 1982 or those set out in self-government agreements between a central or regional level of government and indigenous peoples.

Article 24.20. Fisheries Subsidies

1. The Parties recognize that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity. To that end, no Party shall grant or maintain any of the following subsidies (22) within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

(a) subsidies provided to a fishing vessel (23) or operator (24) while listed for TUU fishing (25) by the flag State, the subsidizing Party, or a relevant RFMO or RFMA in accordance with the rules and procedures of that organization or arrangement and in conformity with international law; and

(b) subsidies for fishing (26) that negatively affect (27) fish stocks that are in an overfished (28) condition.

2. Subsidy programs that are established by a Party before the date of entry into force of this Agreement and are subsidies

referred to in paragraph 1(b) shall be brought into conformity with paragraph 1 as soon as possible and no later than three years after the date of entry into force of this Agreement.

3. In relation to subsidies that are not prohibited by paragraph 1, and taking into consideration a Party's social and developmental priorities, each Party shall make best efforts to refrain from introducing new, or extending or enhancing existing, subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing or overcapacity.

4. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 1 at regular meetings of the Environment Committee.

5. Each Party shall notify the other Parties, within one year of the date of entry into force of this Agreement and every two years thereafter, of any subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement, that the Party grants or maintains to persons engaged in fishing or fishing related activities.

6. These notifications shall cover subsidies provided within the previous two-year period and shall include the information required under Article 25.3 of the SCM Agreement and, to the extent possible, the following information: (29)

(a) program name;

(b) legal authority for the program;

(c) catch data by species in the fishery for which the subsidy is provided;

(d) status, whether overfished, fully fished, or underfished, of the fish stocks in the fishery for which the subsidy is provided;

(e) fleet capacity in the fishery for which the subsidy is provided;

(f) conservation and management measures in place for the relevant fish stock; and

(g) total imports and exports per species.

7. Each Party shall also provide, to the extent possible, information in relation to other subsidies that the Party grants or maintains to persons engaged in fishing or fishing related activities that are not covered by paragraph 1, in particular fuel subsidies.

8. A Party may request additional information from the notifying Party regarding the notifications provided under paragraphs 5 and 6. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.

9. Each Party shall notify the other Parties on an annual basis of any list of vessels and operators identified as having engaged in IUU fishing.

10. The Parties shall work in the WTO towards strengthening international rules on the provision of subsidies to the fisheries sector and enhancing transparency of fisheries subsidies.

(22) For the purposes of this Article, a subsidy shall be attributable to the Party granting or maintaining it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

(23) The term "fishing vessel" refers to any vessel, ship, or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

(24) The term "operator" means the owner of the vessel, or any person onboard, who is in charge of or directs or controls the vessel at the time of the IUU infraction. For greater certainty, the prohibition on the provision of subsidies to operators engaged in IUU fishing applies only to subsidies for fishing or fishing related activities.

(25) "Legal, unreported, and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the IUU IPOA.

(26) For the purposes of this Article, "fishing" means searching for, attracting, locating, catching, taking, or harvesting fish, or any activity which can reasonably be expected to result in the attracting, locating, catching, taking, or harvesting of fish.

(27) The negative effect of such subsidies shall be determined based on the best scientific evidence available.

(28) For the purposes of this Article, a fish stock is overfished if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognized as overfished by the national jurisdiction where the fishing is taking place or by a relevant RFMO or RFMA shall also be considered overfished for the purposes of this Article.

(29) Sharing information and data on existing fisheries subsidy programs does not prejudge their legal status, effects, or nature under the GATT 1994 or the SCM Agreement and is intended to complement WTO data reporting requirements.

Article 24.21. Ilegal, Unreported, and Unregulated (IUU) Fishing

1. The Parties recognize the importance of concerted international action to address IUU fishing as reflected in regional and international instruments (30) and shall endeavor to improve cooperation internationally in this regard, including with and through competent international organizations.

2. In support of international efforts to combat TUU fishing and to help deter trade in products from IUU fishing, each Party shall:

(a) implement port state measures, including through actions consistent with the Port State Measures Agreement; (31)

(b) support monitoring, control, surveillance, compliance, and enforcement schemes, including by adopting, maintaining, reviewing, or revising, as appropriate, measures to:

(i) deter vessels flying its flag and, to the extent provided for in each Party's law, its nationals, from engaging in IUU fishing; and

(ii) address the transshipment at sea of fish caught through IUU fishing or fish products derived from IUU fishing.

(c) maintain a vessel documentation scheme and promote the use of International Maritime Organization numbers, or comparable unique vessel identifiers, as appropriate, for vessels operating outside of its national jurisdiction, in order to enhance transparency of fleets and traceability of fishing vessels;

(d) strive to act consistently with relevant conservation and management measures adopted by RFMOs or RFMAs of which it is not a party so as not to undermine those measures;

(e) endeavor not to undermine catch or trade documentation schemes operated by RFMOs or RFMAs;

(f) develop and maintain publicly available and easily accessible registry data of fishing vessels flying its flag; promote efforts by non-Parties to develop and maintain publicly available and easily accessible registry data of such vessels flying its flag; and support efforts to complete a Global Record of Fishing Vessels, Refrigerated Transport Vessels, and Supply Vessels; and

(g) cooperate with other Parties through the exchange of information and best ptactices to combat trade in products derived from IUU fishing.

3. Consistent with Article 28.9 (Transparent Development of Regulations), a Party shall, to the extent possible, provide the other Parties the opportunity to comment on proposed measures that are designed to prevent trade in fisheries products derived from IUU fishing.

(30) Regional and international instruments include, among others, and as they may apply, the IUU IPOA, the 2005 Rome Declaration on IUU Fishing, adopted at Rome, March 12, 2005, the Port State Measures Agreement, as well as instruments established and adopted by RFMOs and RFMAs, as appropriate, that have the competence to establish conservation and management measures.

(31) For greater certainty, this paragraph is without prejudice to a Party's status under the 2009 Port State Measures Agreement.

Article 24. Conservation and Trade

1. The Parties affirm the importance of combatting the illegal take (32) of, and illegal trade in, wild fauna and flora, and acknowledge that this trade undermines efforts to conserve and sustainably manage those natural resources, has social consequences, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources.

2. The Parties commit to promote conservation and to combat the illegal take of, and illegal trade in, wild fauna and flora. To that end, the Parties shall:

(a) exchange information and experiences on issues of mutual interest related to combatting the illegal take of, and illegal trade in, wild fauna and flora, including combatting illegal logging and associated illegal trade, and promoting the legal trade in associated products;

(b) undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora; and

(c) endeavor to implement, as appropriate, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade.

3. Each Party further commits to:

(a) take appropriate measures to protect and conserve wild fauna and flora that it has identified to be at risk within its territory, including measures to conserve the ecological integrity of specially protected natural areas, for example grasslands and wetlands;

(b) maintain or strengthen government capacity and institutional frameworks to promote the conservation of wild fauna and flora, and endeavor to enhance public participation and transparency in these institutional frameworks; and

(c) endeavor to develop and strengthen cooperation and consultation with interested non-governmental entities and other stakeholders in order to enhance implementation of measures to combat the illegal take of, and illegal trade in, wild fauna and flora.

4. In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence, (33) were taken or traded in violation of that Party's law or another applicable law, (34) the primary purpose of which is to conserve, protect, or manage wild fauna or flora. These measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade. In addition, each Party shall endeavor to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.

5. The Parties recognize that each Party retains the right to exercise administrative, investigatory, and enforcement discretion in its implementation of paragraph 5, including by taking into account in relation to each situation the strength of the available evidence and the seriousness of the suspected violation. In addition, the Parties recognize that in implementing paragraph 5, each Party retains the right to make decisions regarding the allocation of administrative, investigatory, and enforcement resources.

6. Further, each Party shall:

(a) take measures to enhance the effectiveness of inspections of shipments containing wild fauna and flora, including parts and products thereof, at ports of entry, such as improving targeting; and

(b) treat intentional transnational trafficking of wildlife protected under its laws, (35) as a serious crime as defined in the United Nations Convention on Transnational Organized Crime. (36)

7. In order to promote the widest measure of law enforcement cooperation and information sharing between the Parties to combat the illegal take of, and illegal trade in, wild fauna and flora, the Parties shall endeavor to identify opportunities, consistent with their respective law and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing, for example by enhancing participation in law enforcement networks, and, as appropriate, establishing new networks with the objective of developing a strong and effective worldwide network.

(32) For the purposes of this Article, the term "take" means captured, killed, or collected and with respect to a plant, also means harvested, cut,

logged or removed.

(33) For greater certainty, for the purposes of this paragraph, each Party retains the right to determine what constitutes "credible evidence".

(34) For greater certainty, "another applicable law" means a law of the jurisdiction where the take or trade occurred and is only relevant to the question of whether the wild fauna and flora has been taken or traded in violation of that law.

(35) For greater certainty, the term "wildlife" is understood to include all species of wild fauna and flora, including animals, timber, and marine species, and their related parts and products. Further, for purposes of this Article, the term "protected" means a CITES-listed species or a species that is listed under a Party's law as endangered, as threatened, or as being at risk within its territory.

(36) The term "serious crime" is to be understood to have the same meaning as paragraph 2(b) of the United Nations Convention on Transnational Organized Crime, done at New York, on November 15, 2000.

Article 24.23. Sustainable Forest Management and Trade

1. The Parties acknowledge their role as major consumers, producers, and traders of forest products and the importance of a healthy forest sector to provide livelihoods and job opportunities, including for indigenous peoples.

2. The Parties acknowledge the importance of:

(a) the conservation and sustainable management of forests for providing environmental economic, and social benefits for present and future generations;

(b) the critical role of forests in providing numerous ecosystem services, including carbon storage, maintaining water quantity and quality, stabilizing soils, and providing habitat for wild fauna and flora; and

(c) combatting illegal logging and associated trade.

3. The Parties recognize that forest products, when sourced from sustainably managed forests, contribute to fulfilling global environmental objectives, including sustainable development, conservation and sustainable use of resources, and green growth.

4. Accordingly, each Party commits to:

(a) maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management; and

(b) promote trade in legally harvested forest products.

5. The Parties shall exchange information and cooperate, as appropriate, on initiatives to promote sustainable forest management, including initiatives designed to combat illegal logging and associated trade.

Article 24.24. Environmental Goods and Services

1. The Parties recognize the importance of trade and investment in environmental goods and services, including clean technologies, as a means of improving environmental and economic performance, contributing to green growth and jobs, and encouraging sustainable development, while addressing global environmental challenges.

2. Accordingly, the Parties shall strive to facilitate and promote trade and investment in environmental goods and services.

3. The Environment Committee shall consider issues identified by a Party related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavor to address any potential barriers to trade in environmental goods and services that may be identified by a Party, including by working through the Environment Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.

4. The Parties shall cooperate in international fora on ways to further facilitate and liberalize global trade in environmental

goods and services, and may develop cooperative projects on environmental goods and services to address current and future global environmental challenges.

Article 24.25. Environmental Cooperation

1. The Parties recognize the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits, and to strengthen the Parties' joint and individual capacities to protect the environment, and to promote sustainable development as they strengthen their trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship on environmental matters, recognizing it will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.

3. The Parties are committed to undertaking cooperative environmental activities pursuant to the Agreement on Environmental Cooperation among the Governments of Canada, the United Mexican States, and the United States of America (ECA) signed by the Parties, including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the Environmental Cooperation Agreement will be coordinated and reviewed by the Commission for Environmental Cooperation as provided for in the ECA. (37)

(37) The Parties established the Commission for Environmental Cooperation (CEC) under Part Three of the North American Agreement on Environmental Cooperation (NAAEC).

Article 24.26. Environment Committee and Contact Points

1. Each Party shall designate and notify a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement, in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify, in writing, the other Parties in the event of any change of its contact point.

2. The Parties establish an Environment Committee composed of senior government representatives, or their designees, of the relevant trade and environment central level of government authorities of each Party responsible for the implementation of this Chapter.

3. The purpose of the Environment Committee is to oversee the implementation of this Chapter, and its functions are to:

(a) provide a forum to discuss and review the implementation of this Chapter;

(b) periodically inform the Commission and the Council for the Commission for Environmental Cooperation (Council) established under Article 3 (Council Structures and Procedures) of the Environmental Cooperation Agreement regarding the implementation of this Chapter;

(c) consider and endeavor to resolve matters referred to it under Article 24.30 (Senior Representative Consultations);

(d) provide input, as appropriate, for consideration by the Council, relating to submissions on enforcement matters under this Chapter.

(e) coordinate with other committees established under this Agreement as appropriate; and

(f) perform any other functions as the Parties may decide.

4. The Environment Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Environment Committee shall meet every two years unless the Environment Committee agrees otherwise. The Chair of the Environment Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Environment Committee decides otherwise.

5. All decisions and reports of the Environment Committee shall be made by consensus, unless the Committee decides otherwise or unless otherwise provided in this Chapter.

6. All decisions and reports of the Environment Committee shall be made available to the public, unless the Environment Committee decides otherwise.

7. During the fifth year after the date of entry into force of this Agreement, the Environment Committee shall:

(a) review the implementation and operation of this Chapter;

(b) report its findings, which may include recommendations, to the Council and the Commission; and

(c) undertake subsequent reviews at intervals to be decided by the Committee.

8. The Environment Committee shall provide for public input on matters relevant to the Committee's work, as appropriate, and shall hold a public session at each meeting.

9. The Parties recognize the importance of resource efficiency in the implementation of this Chapter and the desirability of using new technologies to facilitate communication and interaction between the Parties and with the public.

Article 24.27. Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with the Secretariat of the Commission for Environmental Cooperation (CEC Secretariat).

2. The CEC Secretariat may consider a submission under this Article if it finds that the submission:

(a) is in writing in English, French, or Spanish;

(b) clearly identifies the person making the submission;

(c) provides sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted;

(d) appears to be aimed at promoting enforcement rather than at harassing industry; and

(e) indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any.

3. If the CEC Secretariat determines that a submission meets the criteria set out in paragraph 2, it shall determine within 30 days of receipt of the submission whether the submission merits requesting a response from the Party. In deciding whether to request a response, the CEC Secretariat shall be guided by whether:

(a) the submission alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is not drawn exclusively from mass media reports.

If the CEC Secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

4. The Party shall inform the CEC Secretariat within 60 days of delivery of the request:

(a) whether the matter at issue is the subject of a pending judicial or administrative proceeding, in which case the CEC Secretariat shall proceed no further; and

(b) of any other information the Party wishes to provide, such as:

(i) information regarding the enforcement of the environmental law at issue, including any actions taken in connection with the matter in question;

(ii) whether the matter was previously the subject of a judicial or administrative proceeding; and

(iii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued.

Article 24.28. Factual Records and Related Cooperation

1. If the CEC Secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, it shall so inform the Council and the Environment Committee within 60 days of receiving the Party's response and provide its reasons.

2. The CEC Secretariat shall prepare a factual record if at least two members of the Council instruct it to do so.

3. The preparation of a factual record by the CEC Secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the CEC Secretariat shall consider any information provided by a Party and may consider any relevant technical, scientific, or other information:

(a) that is publicly available;

(b) submitted by interested persons;

(c) submitted by national advisory or consultative committees referred to in Article 24.5 (Public Information and Participation);

(d) submitted by the Joint Public Advisory Committee (JPAC) referred to in Article 2.2 (Commission for Environmental Cooperation) of the ECA;

(e) developed by independent experts; or

(f) developed under the ECA.

5. The CEC Secretariat shall submit a draft factual record to the Council within 120 days of the Council's instruction to prepare a factual record under paragraph 2. Any Party may provide comments to the CEC Secretariat on the accuracy of the draft within 30 days of the submission of the draft factual record. The CEC Secretariat shall incorporate those comments in the final factual record and promptly submit it to the Council.

6. The CEC Secretariat shall make the final factual record publicly available, normally within 30 days following its submission, unless at least two members of the Council instruct it not to do so.

7. The Environment Committee shall consider the final factual record in light of the objectives of this Chapter and the ECA and may provide recommendations to the Council on whether the matter raised in the factual record could benefit from cooperative activities.

8. The Parties shall provide updates to the Council and the Environment Committee on final factual records, as appropriate.

Article 24.29. Environment Consultations

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Chapter, and shall make every effort through dialogue, consultation, exchange of information, and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.

2. A Party (the requesting Party) may request consultations with any other Party (the responding Party) regarding any matter arising under this Chapter by notifying the responding Party's contact point in writing. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis for the request. The requesting Party shall deliver its request for consultations to the third Party through their respective contact points.

3. A third Party that considers it has a substantial interest in the matter, may participate in the consultations by notifying the contact points of the requesting and responding Parties in writing no later than seven days after the date of delivery of the request for consultations. The third Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the requesting and the responding Parties (the consulting Parties) agree otherwise, the consulting Parties shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.

5. The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution to the matter which may include appropriate cooperative activities. The consulting Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

Article 24.30. Senior Representative Consultations

1. If the consulting Parties fail to resolve the matter under Article 24.29 (Environment Consultations), a consulting Party may request that the Environment Committee representatives from the consulting Parties convene to consider the matter by notifying the contact point of the other consulting Party or Parties in writing. At the same time, the consulting Party making

the request shall deliver the request to the contact points of any other Party.

2. The Environment Committee representatives from the consulting Parties shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts. Environment Committee representatives from any other Party that considers it has a substantial interest in the matter may participate in the consultations.

Article 24. Ministerial Consultations

1. If the consulting Parties fail to resolve the matter under Article 24.30 (Senior Representative Consultations), a consulting Party may refer the matter to the relevant Ministers of the consulting Parties who shall seek to resolve the matter.

2. Consultations pursuant to Article 24.29 (Environment Consultations), Article 24.30 (Senior Representative Consultations), and this Article may be held in person or by any technological means available as agreed by the consulting Parties. If in person, consultations shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

3. Consultations shall be confidential and without prejudice to the rights of any Party in any future proceedings.

Article 24.32. Dispute Resolution

1. If the consulting Parties fail to resolve the matter under Article 24.29 (Environment Consultations), Article 24.30 (Senior Representative Consultations), and Article 24.31 (Ministerial Consultations) within 30 days after the date of receipt of a request under Article 24,.29.2 (Environment Consultations), or any other period as the consulting Parties may decide, the requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel).

2. Notwithstanding Article 31.15 (Role of Experts), in a dispute arising under Article 24.8 (Multilateral Environmental Agreements) a panel convened under Article 31.6 (Establishment of a Panel) shall:

(a) seek technical advice or assistance, if appropriate, from an entity authorised under the relevant multilateral environmental agreement to address the particular matter, and provide the consulting Parties with an opportunity to comment on any such technical advice or assistance received; and

(b) provide due consideration to any interpretive guidance received pursuant to subparagraph (a) on the matter to the extent appropriate in light of its nature and status in making its findings and determinations under Article 31.17 (Panel Report).

ANNEX 24-A.

For Canada, the Ozone-depleting Substances and Halocarbon Alternatives Regulations, of the Canadian Environmental Protection Act, 1999 (CEPA).

For Mexico, the General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA), under Title IV Environmental Protection, Chapter I and II regarding federal enforcement of atmospheric provisions.

For the United States, 42 U.S.C. Â§Â§ 7671-7671q (Stratospheric Ozone Protection).

ANNEX 24-B.

For Canada, the Canada Shipping Act, 2001 and its related regulations.

For Mexico, Article 132 of the General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecoldgico y la Protección al Ambiente - LGEEPA).

For the United States, the Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1915.

Chapter 25. SMALL AND MEDIUM-SIZED ENTERPRISES

Article 25.1. General Principles

1. The Parties, recognizing the fundamental role of SMEs in maintaining dynamism and enhancing competitiveness of their respective economies, shall foster close cooperation between SMEs of the Parties and cooperate in promoting jobs and

growth in SMEs.

2. The Parties recognize the integral role of the private sector in the SME cooperation to be implemented under this Chapter.

Article 25.2. Cooperation to Increase Trade and Investment Opportunities for SMEs

With a view to more robust cooperation between the Parties to enhance commercial opportunities for SMEs, and among other efforts, in the context of Memoranda of Understanding that exist between Parties on SME cooperation, each Party shall seek to increase trade and investment opportunities, and in particular shall:

(a) promote cooperation between the Parties' small business support infrastructure, including dedicated SME centers, incubators and accelerators, export assistance centers, and other centers as appropriate, to create an international network for sharing best practices, exchanging market research, and promoting SME participation in international trade, as well as business growth in local markets;

(b) strengthen its collaboration with the other Parties on activities to promote SMEs owned by under-represented groups, including women, indigenous peoples, youth and minorities, as well as start-ups, agricultural and rural SMEs, and promote partnership among these SMEs and their participation in international trade;

(c) enhance its cooperation with the other Parties to exchange information and best ptactices in areas including improving SME access to capital and credit, SME participation in covered government procurement opportunities, and helping SMEs adapt to changing market conditions; and

(d) encourage participation in platforms, such as web-based, for business entrepreneurs and counselors to share information and best practices to help SMEs link with international suppliers, buyers, and other potential business partners.

Article 25.3. Information Sharing

1. Each Party shall establish or maintain its own free, publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement;

(b) a summary of this Agreement; and

(c) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

(ii) any additional information that would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website links or information through automated electronic transfer to:

(a) the equivalent websites of the other Parties; and

(b) the websites of its own government agencies and other appropriate entities that provide information the Party considers useful to any person interested in trading, investing, or doing business in that Party's territory.

3. The information described in paragraph 2(b) may include:

(a) customs regulations, procedures, or enquiry points;

(b) regulations or procedures concerning intellectual property rights;

(c) technical regulations, standards, or conformity assessment procedures;

(d) sanitary or phytosanitary measures relating to importation or exportation;

(e) foreign investment regulations;

(f) business registration procedures;

(g) trade promotion programs;

(h) competitiveness programs;

(i) SME financing programs;

(j) employment regulations;

(k) taxation information;

(l) information related to the temporary entry of business persons, as set out in Article 16.5 (Provision of Information); and

(m) government procurement opportunities within the scope of Article 13.2 (Scope).

4. Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure the information and links are up-to-date and accurate.

5. To the extent possible, each Party shall make the information in this Article available in English. If this information is available in another authentic language of this Agreement, the Party shall endeavor to make this information available, as appropriate.

Article 25.4. Committee on SME Issues

1. The Parties hereby establish the Committee on SME Issues (SME Committee), comprising government representatives of each Party.

2. The SME Committee shall:

(a) identify ways to assist SMEs in the Parties' territories to take advantage of the commercial opportunities resulting from this Agreement and to strengthen SME competitiveness;

(b) identify and recommend ways for further cooperation between the Parties to develop and enhance partnerships between SMEs of the Parties;

(c) exchange and discuss each Party's experiences and best practices in supporting and assisting SME exporters with respect to, among other things, training programs, trade education, trade finance, trade missions, trade facilitation, digital trade, identifying commercial partners in the territories of the Parties, and establishing good business credentials;

(d) develop and promote seminars, workshops, webinars, or other activities to inform SMEs of the benefits available to them under this Agreement;

(e) explore opportunities to facilitate each Party's work in developing and enhancing SME export counseling, assistance, and training programs;

(f) recommend additional information that a Party may include on the website referred to in Article 25.3 (Information Sharing);

(g) review and coordinate its work program with the work of other committees, working groups, and other subsidiary bodies established under this Agreement, as well as of other relevant international bodies, to avoid duplication of work programs and to identify appropriate opportunities for cooperation to improve the ability of SMEs to engage in trade and investment opportunities resulting from this Agreement;

(h) collaborate with and encourage committees, working groups and other subsidiary bodies established under this Agreement to consider SME-related commitments and activities into their work;

(i) review the implementation and operation of this Chapter and SME-related provisions within this Agreement and report findings and make recommendations to the Commission that can be included in future work and SME assistance programs as appropriate;

(j) facilitate the development of programs to assist SMEs to participate and integrate effectively into the Parties' regional and global supply chains;

(k) promote the participation of SMEs in digital trade in order to take advantage of the opportunities resulting from this Agreement and rapidly access new markets;

(l) facilitate the exchange of information on entrepreneurship education programs for youth and under-represented groups to promote the entrepreneurial environment in the territories of the Parties;

(m) submit on an annual basis, unless the Parties decide otherwise, a report of its activities and make appropriate recommendations to the Commission; and

(n) consider any other matter pertaining to SMEs as the SME Committee may decide, including issues raised by SMEs regarding their ability to benefit from this Agreement.

3. The SME Committee shall convene within one year after the date of entry into force of this Agreement and thereafter meet annually, unless the Parties decide otherwise.

4. The SME Committee may seek to collaborate with appropriate experts and international donor organizations in carrying out its programs and activities.

Article 25.5. SME Dialogue

1. The SME Committee shall convene a Trilateral SME Dialogue (the "SME Dialogue"). The SME Dialogue may include private sector, employees, non-government organizations, academic experts, SMEs owned by diverse and under-represented groups, and other stakeholders from each Party.

2. The SME Committee shall convene the SME Dialogue annually, unless it decides otherwise.

3. SME Dialogue participants may provide views to the Committee on any matter within the scope of this Agreement and on the implementation and further modernization of this Agreement.

4. SME Dialogue participants may provide relevant technical, scientific, or other information to the Committee. Article 25.6: Obligations in the Agreement that Benefit SMEs

The Parties recognize that in addition to the provisions in this Chapter, there are provisions in other Chapters of this Agreement that seek to enhance cooperation among the Parties on SME issues or that otherwise may be of particular benefit to SMEs. These include:

(a) Origin Procedures: Article 5.18 (Committee on Rules of Origin and Origin Procedures);

(b) Government Procurement: Article 13.17 (Ensuring Integrity in Procurement Practices); Article 13.20 (Facilitation of Participation by SMEs), and Article 13.21 (Committee on Government Procurement);

(c) Cross-Border Trade in Services: Article 15.10 (Small and Medium-Sized Enterprises);

(d) Digital Trade: Article 19.17 (Interactive Computer Services); Article 19.18 (Open Government Data);

(e) Intellectual Property: Article 20.14 (Committee on Intellectual Property Rights);

(f) Labor: Article 23.12 (Cooperation);

(g) Environment: Article 24.17 (Marine Wild Capture Fisheries);

(h) Competitiveness: Article 26.1 (North American Competitiveness Committee);

(i) Anticorruption: Article 27.5 (Participation of Private Sector and Society); and

(j) Good Regulatory Practices: Article 28.4 (Internal Consultation, Coordination, and Review), Article 28.11 (Regulatory Impact Assessment), and Article 28.13 (Retrospective Review).

Article 25.7. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 26. COMPETITIVENESS

Article 26.1. North American Competitiveness Committee

1. Recognizing their unique economic and commercial ties, close proximity, and extensive trade flows across their borders, the Parties affirm their shared interest in strengthening regional economic growth, prosperity, and competitiveness.

2. With a view to promoting further economic integration among the Parties and enhancing the competitiveness of North American exports, the Parties hereby establish a North American Competitiveness Committee (Competitiveness Committee), composed of government representatives of each Party.

3. Each Party shall designate a contact point for the Competitiveness Committee, notify the other Parties of the contact point, and promptly notify the other Parties of any subsequent changes. Recognizing the need for a comprehensive and coordinated approach to enhance North American competitiveness, each Party's contact point shall coordinate with its relevant government departments and agencies.

4. The Competitiveness Committee shall discuss and develop cooperative activities in support of a strong economic environment that incentivizes production in North America, facilitates regional trade and investment, enhances a predictable and transparent regulatory environment, encourages the swift movement of goods and the provision of services throughout the region, and responds to market developments and emerging technologies.

5. The Competitiveness Committee shall:

(a) discuss effective approaches and develop information-sharing activities to support a competitive environment in North America that facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;

(b) explore ways to further assist traders of a Party to identify and take advantage of trade opportunities under this Agreement;

(c) provide advice and recommendations, as appropriate, to the Commission on ways to further enhance the competitiveness of the North American economy, including recommendations aimed at enhancing the participation of SMEs, and enterprises owned by under-represented groups including women, indigenous peoples, youth, and minorities;

(d) identify priority projects and policies to develop a modern physical and digital trade- and investment-related infrastructure, and improve the movement of goods and provision of services within the free trade area;

(e) discuss collective action to combat market-distorting practices by non-Parties that are affecting the North American region;

(f) promote cooperative activities for trade and investment between the Parties with respect to innovation and technology, including best practices in their application; and

(g) engage in other activities as the Parties may decide.

6. The Competitiveness Committee shall meet within one year of the date of entry into force of this Agreement, and annually thereafter, unless the Parties decide otherwise.

7. The Competitiveness Committee shall develop a work plan to carry out its functions under paragraphs 4 and 5. The Committee shall submit a report to the Commission with the results that have been achieved under the work plan together with any advice and recommendations, if appropriate, on ways to further enhance the competitiveness of the North American economy. Each Party shall publish the work plan and report of the Committee. The Parties shall undertake the above activities on an annual basis, unless the Parties decide otherwise.

8. In carrying out its functions, the Committee may work with other committees, working groups, and any other subsidiary body established under this Agreement. The Committee may also seek advice from, and consider the work of, appropriate experts. The Committee shall ensure that it does not duplicate the activities of these other bodies.

Article 26.2. Engagement with Interested Persons

Each Party shall establish or maintain an appropriate mechanism to provide regular and timely opportunities for interested persons to provide input on matters relevant to enhancing competitiveness.

Article 26.3. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

Chapter 27. ANTICORRUPTION

Article 27.1. Definitions

For the purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the public official's position, whether or not within the official's authorized competence;

foreign public official means an individual holding a legislative, executive, administrative or judicial office of a foreign country, at any level of government, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that person's seniority; and an individual exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

IACAC means the existing Inter-American Convention Against Corruption, done at Caracas, Venezuela, on March 29, 1996;

OECD Convention means the existing Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris, France, on December 17, 1997;

official of a public international organization means an international civil servant or an individual authorized by a public international organization to act on its behalf;

public enterprise means an enterprise over which a government or governments may, directly or indirectly, exercise a dominant influence; (1)

public official means an individual:

(a) holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that person's seniority;

(b) who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service, as defined under that Party's law and as applied in the pertinent area of that Party's law; or

(c) defined as a public official under a Party's law; and

UNCAC means the existing United Nations Convention against Corruption, done at New York, United States, on October 31, 2003.

(1) Dominant influence for purposes of this definition shall be deemed to exist, inter alia, if the government or governments hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise, or can appoint a majority of the members of the enterpriseâs administrative or managerial body or supervisory board.

Article 27.2. Scope

1. This Chapter applies to measures to prevent and combat bribery and corruption relating to any matter covered by this Agreement. (2)

2. The Parties affirm their resolve to prevent and combat bribery and corruption in international trade and investment. Recognizing the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard, the Parties affirm their adherence to the OECD Convention, with its Annex; the IACAC; and the UNCAC.

3. The Parties reiterate their support for the principles contained in documents developed by APEC and G-20 anticorruption fora aimed at preventing and combating corruption and endorsed by leaders or relevant ministers, including the G20 High Level Principles on Organizing against Corruption; G20 High Level Principles on Corruption and Growth, G20 Guiding Principles on Enforcement of the Foreign Bribery Offence (2013); G20 Guiding Principles to Combat Solicitation; G20 High Level Principles on the Liability of Legal Persons for Corruption, APEC Conduct Principles for Public Officials; and the APEC Principles on the Prevention of Bribery and Enforcement of Anti-Bribery Laws.

4. The Parties also reiterate their support for, and encourage awareness among their private sectors of, available anticorruption compliance guidance including the APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector, APEC General Elements of Effective Voluntary Corporate Compliance Programs; and G20 High Level Principles on Private Sector Transparency and Integrity.

5. The Parties recognize that the description of offenses adopted or maintained in accordance with this Chapter, and of the applicable legal defenses or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offenses shall be prosecuted and punished in accordance with each Party's law.

(2) For the United States, this Chapter does not apply to conduct outside the jurisdiction of federal criminal law and, to the extent that an obligation involves preventive measures, shall apply only to those measures covered by federal law governing federal, state, and local officials.

Article 27.3. Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offenses under its law, in matters that affect international trade or investment, when committed intentionally, by a person subject to its jurisdiction:

(a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties;

(b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties;

(c) the promise, offering, or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

(d) the aiding or abetting, or conspiracy in the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as a criminal offense under its law, in matters that affect international trade or investment, when committed intentionally, by a person subject to its jurisdiction, the embezzlement, misappropriation or another diversion (3) by a public official for their benefit or for the benefit of another person or entity, of property, public or private funds or securities, or any other thing of value entrusted to the public official by virtue of their position.

3. Each Party shall make the commission of an offense described in paragraph 1, 2, or 6 liable to sanctions that take into account the gravity of that offense.

4. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offenses described in paragraph 1 or 6.

5. Each Party shall disallow the tax deductibility of bribes and, if appropriate, other expenses considered illegal by the Party incurred in furtherance of that conduct.

6. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing the offenses described in paragraph 1:

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law. (4)

7. Each Party shall adopt or maintain measures considered appropriate by the Party to protect against unjustified treatment a person who, in good faith and on reasonable grounds, reports to the competent authorities facts concerning offenses described in paragraph 1, 2, or 6. (5)

8. The Parties recognize the harmful effects of facilitation payments. Each Party shall, in accordance with its laws and regulations:

(a) encourage enterprises to prohibit or discourage the use of facilitation payments; and

(b) take steps to raise awareness among its public officials of its bribery laws, with a view to stopping the solicitation and the acceptance of facilitation payments. (6)

(3) For Canada, "diversion" means embezzlement or misappropriation that constitute the criminal offenses of theft or fraud under Canadian law.

(4) For the United States, this paragraph applies only to issuers that have a class of securities registered pursuant to 15 U.S.C. 781 or that are otherwise required to file reports pursuant to 15 U.S.C. 780 (d).

(5) For Mexico and the United States, this paragraph applies only at the central level of government. For Canada, this paragraph applies to measures within the scope of the Public Servants Disclosure Protection Act, S.C. 2005, c.46, as amended.

(6) For Canada, this subparagraph applies to measures within the scope of the Public Servants Disclosure Protection Act, S.C, 2005, c.46, as amended.

Article 27.4. Promoting Integrity Among Public Officials (7)

1. To fight corruption in matters that affect trade and investment, each Party should promote, among other things, integrity, honesty and responsibility among its public officials. To this end, each Party shall, in accordance with the fundamental principles of its legal system, adopt or maintain:

(a) measures to provide adequate procedures for the selection and training of individuals for public positions considered by the Party to be especially vulnerable to corruption;

(b) measures to promote transparency in the behavior of public officials in the exercise of public functions;

(c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

(d) measures that require senior public officials, and other public officials as considered appropriate by the Party, to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

(e) measures to facilitate reporting by public officials of any facts concerning offenses described in Article 27.3.1, 27.3.2, or 27.3.6 (Measures to Combat Corruption) to appropriate authorities, if those facts come to their notice in the performance of their functions.

2. Each Party shall adopt or maintain codes or standards of conduct for the correct, honorable and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.

3. Each Party shall, to the extent consistent with the fundamental principles of its legal system, establish procedures through which a public official accused of an offense described in Article 27.3.1 (Measures to Combat Corruption) may, as considered appropriate by that Party, be removed, suspended, or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

(7) For Mexico and the United States, this article applies only at the central level of government. For Canada, this article applies to measures within the scope of the Public Servants Disclosure Protection Act, S.C. 2005, c.46, as amended.

Article 27.5. Participation of Private Sector and Society

1. Each Party shall take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organizations, and community-based organizations, in preventing and combatting corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes, and gravity of corruption, and the threat posed by it. To this end, a Party may, for example:

(a) undertake public information activities and public education programs that contribute to non-tolerance of corruption;

(b) adopt or maintain measures to encourage professional associations and other non- governmental organizations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programs or measures for preventing and detecting bribery and corruption in international trade and investment;

(c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programs or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; or

(d) adopt or maintain measures that respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning corruption.

2. Each Party shall endeavor to encourage private enterprises, taking into account their structure and size, to:

(a) adopt or maintain sufficient internal auditing controls to assist in preventing and detecting offenses described in Article 27.3.1 or 27.3.6 (Measures to Combat Corruption); and

(b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

3. Each Party shall take appropriate measures to ensure that its relevant anticorruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of an incident that may be considered to constitute an offense described in Article 27.3.1 (Measures to Combat Corruption).

4. The Parties recognize the benefits of internal compliance programs in enterprises to combat corruption. In this regard, each Party shall encourage enterprises, taking into account their size, legal structure, and the sectors in which they operate, to establish compliance programs for the purpose of preventing and detecting offenses described in Article 27.3.1 or 27.3.6 (Measures to Combat Corruption).

Article 27.6. Application and Enforcement of Anticorruption Laws

1. In accordance with the fundamental principles of its legal system, no Party shall fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 27.3 (Measures to Combat Corruption) through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement as an encouragement for trade and investment. (8)

2. In accordance with the fundamental principles of its legal system, each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise their discretion with respect to the enforcement of its anticorruption laws. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offenses described in Article 27.3 (Measures to Combat Corruption).

(8) For greater certainty, the Parties recognize that individual cases or specific discretionary decisions related to the enforcement of anticorruption laws are subject to each Party's laws and legal procedures.

Article 27.7. Relation to other Agreements

Nothing in this Agreement affects the rights and obligations of the Parties under the IACAC; the OECD Convention; the

UNCAC; or the United Nations Convention against Transnational Organized Crime, done at New York on November 15, 2000.

Article 27.8. Dispute Settlement

1. Chapter 31 (Dispute Settlement), as modified by this Article, applies to disputes relating to a matter arising under this Chapter.

2. A Party may only have recourse to the procedures set out in this Article and Chapter 31 (Dispute Settlement) if it considers that a measure of another Party is inconsistent with an obligation under this Chapter, or that another Party has otherwise failed to carry out an obligation under this Chapter, in a manner affecting trade or investment between Parties.

3. No Party shall have recourse to dispute settlement under this Article or Chapter 31 (Dispute Settlement) for a matter arising under Article 27.6 (Application and Enforcement of Anticorruption Laws) or Article 27.9 (Cooperation).

4. Further to Article 31.4 (Consultations), each Consulting Party shall ensure that consultations include personnel of the consulting Party's government authorities with responsibility for the anticorruption issue under dispute.

5. Further to Article 31.5 (Commission, Good Offices, Conciliation, and Mediation), any discussion held by the Free Trade Commission shall, to the extent practicable, include participation by a Minister responsible for the anticorruption issue under dispute, or their designee.

6. Further to Article 31.8 (Roster and Qualifications of Panelists), the panel shall have expertise in the area of anticorruption under dispute.

Article 27.9. Cooperation

1. The Parties recognize the importance of cooperation, coordination, and exchange of information between their respective anticorruption law enforcement agencies in order to foster effective measures to prevent, detect, and deter bribery and corruption.

2. The Parties shall endeavor to strengthen cooperation and coordination among their respective anticorruption law enforcement agencies.

3. Recognizing that the Parties can benefit by sharing their diverse experience and best practices in developing, implementing, and enforcing their anticorruption laws and policies, the Parties' anticorruption law enforcement agencies shall consider undertaking technical cooperation activities, including training programs, as decided by the Parties.

4. The Parties acknowledge the importance of cooperation and coordination internationally, including the OECD Working Group on Bribery in International Business Transactions, the UNCAC Conference of the State Parties and the Mechanism for Follow-Up on the Implementation of the IACAC, as well as their support to the APEC Anti-Corruption and Transparency Working Group and the G20 Anti-Corruption Working Group.

Chapter 28. GOOD REGULATORY PRACTICES

Article 28.1. Definitions

For the purposes of this Chapter:

regulation means a measure of general application adopted, issued, or maintained by a regulatory authority with which compliance is mandatory, except as set forth in Annex 28-A (Additional Provisions Concerning the Scope of "Regulations" and "Regulatory Authorities");

regulatory authority means an administrative authority or agency at the Party's central level of government that develops, proposes or adopts a regulation, and does not include legislatures or courts; and

regulatory cooperation means an effort between two or more Parties to prevent, reduce, or eliminate unnecessary regulatory differences to facilitate trade and promote economic growth, while maintaining or enhancing standards of public health and safety and environmental protection.

Article 28.2. Subject Matter and General Provisions

1. The Parties recognize that implementation of government-wide practices to promote regulatory quality through greater

transparency, objective analysis, accountability, and predictability can facilitate international trade, investment, and economic growth, while contributing to each Party's ability to achieve its public policy objectives (including health, safety, and environmental goals) at the level of protection it considers appropriate. The application of good regulatory practices can support the development of compatible regulatory approaches among the Parties, and reduce or eliminate unnecessarily burdensome, duplicative, or divergent regulatory requirements. Good regulatory practices also are fundamental to effective regulatory cooperation.

2. Accordingly, this Chapter sets out specific obligations with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of the Parties' respective regulations.

3. For greater certainty, this Chapter does not prevent a Party from:

(a) pursuing its public policy objectives (including health, safety, and environmental goals) at the level it considers to be appropriate;

(b) determining the appropriate method of implementing its obligations in this Chapter within the framework of its own legal system and institutions; or

(c) adopting good regulatory practices that supplement those that are set out in this Chapter.

Article 28.3. Central Regulatory Coordinating Body

Recognizing that institutional arrangements are particular to each Party's system of governance, the Parties note the important role of their respective central regulatory coordinating bodies in promoting good regulatory practices; performing key advisory, coordination, and review functions to improve the quality of regulations; and developing improvements to their regulatory system. The Parties intend to maintain their respective central regulatory coordinating bodies, within their respective mandates and consistent with their law.

Article 28.4. Internal Consultation, Coordination, and Review

1. The Parties recognize that internal processes or mechanisms providing for consultation, coordination, and review among domestic authorities in the development of regulations can increase regulatory compatibility among the Parties and facilitate trade. Accordingly, each Party shall adopt or maintain those processes or mechanisms to pursue, among others, the following objectives:

(a) promoting government-wide adherence to good regulatory practices, including those set forth in this Chapter;

(b) identifying and developing improvements to government-wide regulatory processes;

(c) identifying potential overlap or duplication between proposed and existing regulations, and preventing the creation of inconsistent requirements across domestic authorities;

(d) supporting compliance with international trade and investment obligations, including, as appropriate, the consideration of international standards, guides, and recommendations;

(e) promoting consideration of regulatory impacts, including burdens on small enterprises (1) of information collection and implementation; and

(f) encouraging regulatory approaches that avoid unnecessary restrictions on competition in the marketplace.

2. Each Party shall make publicly available a description of the processes or mechanisms referred to in paragraph 1.

(1) ! For greater certainty and for the purposes of this Chapter, for Mexico "small enterprises" also include medium enterprises.

Article 28.5. Information Quality

1. Each Party recognizes the need for regulations to be based upon information that is reliable and of high quality. To that end, each Party should adopt or maintain publicly available guidance or mechanisms that encourage its regulatory authorities when developing a regulation to:

(a) seek the best, reasonably obtainable information, including scientific, technical, economic, or other information relevant to the regulation it is developing;

(b) rely on information that is appropriate for the context in which it is used; and

(c) identify sources of information in a transparent manner, as well as any significant assumptions and limitations.

2. If a regulatory authority systematically collects information from members of the public through identical questions in a survey for use in developing a regulation, each Party shall provide that the authority should:

(a) use sound statistical methodologies before drawing generalized conclusions concerning the impact of the regulation on the population affected by the regulation; and

(b) avoid unnecessary duplication and otherwise minimize unnecessary burdens on those being surveyed.

Article 28.6. Early Planning

Each Party shall publish annually a list of regulations that it reasonably expects within the following 12 months to adopt or propose to adopt. Each regulation identified in the list should be accompanied by:

(a) a concise description of the planned regulation;

(b) a point of contact for a knowledgeable individual in the regulatory authority responsible for the regulation; and

(c) an indication, if known, of sectors to be affected and whether there is any expected significant effect on international trade or investment.

Entries in the list should also include, to the extent available, time tables for subsequent actions, including those providing opportunities for public comment under Article 28.9 (Transparent Development of Regulations).

Article 28.7. Dedicated Website

1. Each Party shall maintain a single, free, publicly available website that, to the extent ptacticable, contains all information that it is required to publish pursuant to Article 28.9 (Transparent Development of Regulations).

2. A Party may comply with paragraph 1 by making publicly available information on, and providing for the submission of comments through, more than one website, provided the information can be accessed, and submissions can be made, from a single web portal that links to other websites.

Article 28.8. Use of Plain Language

Each Party should provide that proposed and final regulations are written using plain language to ensure that those regulations are clear, concise, and easy for the public to understand, recognizing that some regulations address technical issues and that relevant expertise may be required to understand or apply them.

Article 28.9. Transparent Development of Regulations

1. During the period described in paragraph 2, when a regulatory authority is developing a regulation, the Party shall, under normal circumstances, (2) publish:

(a) the text of the regulation along with its regulatory impact assessment, if any;

(b) an explanation of the regulation, including its objectives, how the regulation achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered;

(c) an explanation of the data, other information, and analyses the regulatory authority relied upon to support the regulation; and

(d) the name and contact information of an individual official from the regulatory authority who may be contacted concerning questions regarding the regulation.

At the same time the Party publishes the information listed in subparagraphs (a) through (d), the Party shall also make publicly available data, other information, and scientific and technical analyses it relied upon in support of the regulation, including any risk assessment.

2. With respect to the items required to be published under paragraph 1, each Party shall publish them before the

regulatory authority finalizes its work on the regulation? and at a time that will enable the regulatory authority to take into account the comments received and, as appropriate, make revisions to the text of the regulation published under subparagraph 1(a).

3. After the items identified in paragraph 1 have been published, the Party shall ensure that any interested person, regardless of domicile, has an opportunity, on terms no less favorable than those afforded to a person of the Party, to submit written comments on the items identified in paragraph 1 for consideration by the relevant regulatory authority of the Party. Each Party shall allow interested persons to submit any comments and other inputs electronically and may also allow written submissions by mail to a published address or through another technology.

4. If a Party expects a draft regulation to have a significant impact on trade, the Party should normally provide a time period to submit written comments and other input on the items published in accordance with paragraph 1 that is:

(a) not less than 60 days from the date the items identified in paragraph 1 are published; or

(b) a longer time period as is appropriate due to the nature and complexity of the regulation, in order to provide interested persons adequate opportunity to understand how the regulation may affect their interests and to develop informed responses.

5. With respect to draft regulations not covered under paragraph 4, a Party shall endeavor, under normal circumstances, to provide a time period to submit written comments and other input on the information published in accordance with paragraph 1 that is not less than four weeks from the date the items identified in paragraph 1 are published.

6. In addition, the Party shall consider reasonable requests to extend the comment time period under paragraph 4 or 5 to submit written comments or other input on a draft regulation.

7. Each Party shall endeavor to promptly make publicly available any written comments it receives, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content. If it is impracticable to publish all the comments on the website provided for in Article 28.7 (Dedicated Website), the regulatory authority of a Party shall endeavor to publish those comments on its own website.

8. Before finalizing its work on a regulation, a regulatory authority of a Party shall evaluate any information provided in written comments received during the comment period.

9. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall promptly publish the text of the regulation, any final impact assessment, and other items as set out in Article 28.12 (Final Publication).

10. The Parties are encouraged to publish government-generated items identified in this Article in a format that can be read and digitally processed through word searches and data mining by a computer or other technology.

(2) For the purposes of paragraphs 1 and 4, "normal circumstances" do not include, for example, situations when publication in accordance with those paragraphs would render the regulation ineffective in addressing the particular harm to the public interest that the regulation aims to address; if urgent problems (for example, of safety, health, or environmental protection) arise or threaten to arise for a Party; or if the regulation has no substantive impact upon members of the public, including persons of another Party.

(3) For Canada, a regulatory authority "finalizes its work" on a regulation when a final regulation is published in Canada Gazette, Part II. For Mexico, a regulatory authority "finalizes its work" on a regulation when the final act of general application is issued and published in the Official Gazette. For the United States, a regulatory authority "finalizes its work" on a regulation when a final rule is signed and published in the Federal Register.

Article 28.10. Expert Advisory Groups

1. The Parties recognize that their respective regulatory authorities may seek expert advice and recommendations with respect to the preparation or implementation of regulations from groups or bodies that include non-governmental persons. The Parties also recognize that obtaining those advice and recommendations should be a complement to, rather than a substitute for, the procedures for seeking public comment pursuant to Article 28.9.3 (Transparent Development of Regulations).

2. For the purposes of this Article, an expert group or body means a group or body: (a) established by a Party;

(b) the membership of which includes persons who are not employees or contractors of the Party; and

(c) the function of which includes providing advice or recommendations, including of a scientific or technical nature, to a regulatory authority of the Party with respect to the preparation or implementation of regulations.

This Article does not apply to a group or body that is established to enhance intergovernmental coordination, or to provide advice related to international affairs, including national security. (4)

3. Each Party shall encourage its regulatory authorities to ensure that the membership of any expert group or body includes a range and diversity of views and interests, as appropriate to the particular context.

4. Recognizing the importance of keeping the public informed with respect to the purpose, membership, and activities of expert groups and bodies, and that those expert groups or bodies can provide an important additional perspective or expertise on matters affecting government operations, each Party shall encourage its regulatory authorities to provide public notice of:

(a) the name of any expert group or body it creates or uses, and the names of the members of the group or body and their affiliations;

(b) the mandate and functions of the expert group or body;

(c) information about upcoming meetings; and

(d) a summary of the outcome of any meeting of an expert group or body.

5. Each Party shall endeavor, as appropriate, to make publicly available any documentation made available to or prepared for or by the expert group or body, and recognizes the importance of providing a means for interested persons to provide inputs to the expert groups or bodies.

(4) For greater certainty, this Article does not apply to Mexico's National Standardization Advisory Committees (Comité Consultivo Nacional de Normalización), established under article 62 of the Federal Law on Metrology and Standardization.

Article 28.11. Regulatory Impact Assessment

1. The Parties recognize that regulatory impact assessment is a tool to assist regulatory authorities in assessing the need for and potential impacts of regulations they are preparing. Each Party should encourage the use of regulatory impact assessments in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain thresholds established by the Party.

2. Each Party shall maintain procedures that promote the consideration of the following when conducting a regulatory impact assessment:

(a) the need for a proposed regulation, including a description of the nature and significance of the problem the regulation is intended to address;

(b) feasible and appropriate regulatory and non-regulatory alternatives that would address the need identified in subparagraph (a), including the alternative of not regulating;

(c) benefits and costs of the selected and other feasible alternatives, including the relevant impacts (such as economic, social, environmental, public health, and safety effects) as well as risks and distributional effects over time, recognizing that some costs and benefits are difficult to quantify or monetize; and

(d) the grounds for concluding that the selected alternative is preferable.

3. Each Party should consider whether a proposed regulation may have significant adverse economic effects on a substantial number of small enterprises. If so, the Party should consider potential steps to minimize those adverse economic impacts, while allowing the Party to fulfill its objectives.

Article 28.12. Final Publication

1. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall promptly publish, in a final regulatory impact assessment or other document:

(a) the date by which compliance is required;

(b) an explanation of how the regulation achieves the Party's objectives, the rationale for the material features of the regulation (to the extent different than the explanation provided for in Article 28.9 (Transparent Development of Regulations)), and the nature of and reasons for any significant revisions made since making the regulation available for public comment;

(c) the regulatory authority's views on any substantive issues raised in timely submitted comments;

(d) major alternatives, if any, that the regulatory authority considered in developing the regulation and reasons supporting the alternative that it selected; and

(e) the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in finalizing its work on the regulation.

2. Each Party shall ensure that all regulations in effect are published on a free, publicly available website.

Article 28.13. Retrospective Review

1. Each Party shall adopt or maintain procedures or mechanisms to conduct retrospective reviews of its regulations in order to determine whether modification or repeal is appropriate. Retrospective reviews may be initiated, for example, pursuant to a Party's law, on a regulatory authority's own initiative, or in response to a suggestion submitted pursuant to Article 28.14 (Suggestions for Improvement).

2. When conducting a retrospective review, each Party should consider, as appropriate:

(a) the effectiveness of the regulation in meeting its initial stated objectives, for example by examining its actual social or economic impacts;

(b) any circumstances that have changed since the development of the regulation, including availability of new information;

(c) new opportunities to eliminate unnecessary regulatory burdens;

(d) ways to address unnecessary regulatory differences that may adversely affect trade among the Parties, including through the activities listed in Article 28.17.3 (Encouragement of Regulatory Compatibility and Cooperation); and

(e) any relevant views expressed by members of the public.

3. Each Party shall include among the procedures or mechanisms adopted pursuant to paragraph 1 provisions addressing impacts on small enterprises.

4. Each Party is encouraged to publish, to the extent available, any official plans and results of retrospective reviews.

Article 28.14. Suggestions for Improvement

Each Party shall provide the opportunity for any interested person to submit to any regulatory authority of the Party written suggestions for the issuance, modification, or repeal of aregulation. The basis for those suggestions may include, for example, that, in the view of the interested person, the regulation has become ineffective at protecting health, welfare, or safety, has become more burdensome than necessary to achieve its objective (for example with respect to its impact on trade), fails to take into account changed circumstances (such as fundamental changes in technology, or relevant scientific and technical developments), or relies on incorrect or outdated information.

Article 28.15. Information About Regulatory Processes

1. Each Party shall publish online a description of the processes and mechanisms employed by its regulatory authorities to prepare, evaluate, or review regulations. The description shall identify the applicable guidelines, rules, or procedures, including those regarding opportunities for the public to provide input.

2. Each Party shall also publish online:

(a) a description of the functions and organization of each of its regulatory authorities, including the appropriate offices through which persons can obtain information, make submissions or requests, or obtain decisions;

(b) any procedural requirements or forms promulgated or utilized by any of its regulatory authorities;

(c) the legal authority for verification, inspection, and compliance activities by its regulatory authorities;

(d) information concerning the judicial or administrative procedures available to challenge regulations; and

(e) any fees charged by a regulatory authority to a person of a Party for services rendered in connection with the implementation of a regulation, including for licensing, inspections, audits, and other administrative actions required under the Party's law to import, export, sell, market, or use a good.

Article 28.16. Annual Report

Each Party shall prepare and make freely and publicly available online, on an annual basis, a report setting forth:

(a) to the extent feasible, an estimate regarding the annual costs and benefits of economically significant regulations, as established by the Party, issued in that period by its regulatory authorities, on an aggregate or individual basis; and

(b) any changes, or any proposals to make changes, to its regulatory system.

Article 28.17. Encouragement of Regulatory Compatibility and Cooperation

1. The Parties recognize the important contribution of dialogues between their respective regulatory authorities in promoting regulatory compatibility and regulatory cooperation when appropriate, and in order to facilitate trade and investment and to achieve regulatory objectives. Accordingly, each Party should encourage its regulatory authorities to engage in mutually beneficial regulatory cooperation activities with relevant counterparts of one or more of the other Parties in appropriate circumstances to achieve these objectives.

2. The Parties recognize the valuable work of bilateral and trilateral cooperation fora, and intend to continue to work together to further regulatory compatibility on a mutually beneficial basis in such fora or under this Agreement. The Parties also recognize that effective regulatory cooperation requires the participation of regulatory authorities that possess the authority and technical expertise to develop, adopt, and implement regulations. Each Party should encourage input from members of the public to identify promising avenues for cooperation activities.

3. The Parties recognize that a broad range of mechanisms including those set forth in the WTO Agreement, exists to help minimize unnecessary regulatory differences and to facilitate trade or investment, while contributing to each Party's ability to meet its public policy objectives. These mechanisms may include, as appropriate to the particular circumstances:

(a) early stage formal or informal exchange of technical or scientific information or data, including coordinating research agendas, to reduce duplicative research;

(b) exploring possible common approaches to the evaluation and mitigation of risks or hazards, including those potentially posed by the use of emerging technologies;

(c) whenever appropriate, regulating by specifying performance requirements rather than design characteristics, to promote innovation and facilitate trade;

(d) seeking to collaborate in relevant international fora;

(e) exchanging information, such as of a technical or practical nature, on regulations that each Party is developing to maximize the opportunity for common approaches;

(f) co-funding of research in support of regulations and implementation tools of joint interest;

(g) facilitating the greater use of relevant international standards, guides, and recommendations as the basis for regulations, testing, and approval procedures;

(h) when developing or implementing regulations, considering relevant scientific or technical guidance documents developed through international collaborative initiatives;

(i) considering common approaches to the display of product or consumer information;

(j) considering the development of compatible platforms or formats for industry submission of product information for regulatory review;

(k) coordinating in the implementation of regulations and sharing compliance information, including, as appropriate by entering into confidentiality agreements; and

(l) periodically exchanging information, as appropriate, concerning any planned or ongoing post-implementation review or

evaluation of regulations in effect affecting trade or investment.

Article 28.18. Committee on Good Regulatory Practices

1. The Parties hereby establish a Committee on Good Regulatory Practices (the GRP Committee) composed of government representatives from each Party, including representatives from their central regulatory coordinating bodies as well as relevant regulatory agencies.

2. Through the GRP Committee, the Parties shall enhance their communication and collaboration in matters relating to this Chapter, including encouraging regulatory compatibility and regulatory cooperation, with a view to facilitating trade between the Parties.

3. The GRP Committee's functions include:

(a) monitoring the implementation and operation of this Chapter, including through updates on each Party's regulatory practices and processes;

(b) exchanging information on effective methods for implementing this Chapter, including with respect to approaches to regulatory cooperation, and relevant work in international fora;

(c) consulting on matters and positions in advance for meetings in international fora that are related to the work of this Chapter, including opportunities for workshops, seminars and other relevant activities to support strengthening of good regulatory practices and to support improvements in approaches to regulatory cooperation.

(d) considering suggestions from stakeholders regarding opportunities to strengthen the application of good regulatory practices;

(e) considering developments in good regulatory practices and approaches to regulatory cooperation with a view to identifying future work for the GRP Committee or making recommendations as appropriate to the Commission for improving the operation and implementation of this Chapter; and

(f) taking any other steps that the Parties consider will assist them in implementing this Chapter.

4. Each Party shall provide opportunities for persons of that Party to provide views on the implementation of this Chapter.

5. In carrying out its work, the GRP Committee shall take into account the activities of other committees, working groups and other subsidiary bodies established under this Agreement in order to avoid duplication of activities.

6. Unless the Parties decide otherwise, the GRP Committee shall meet at least once a year. The Parties shall endeavor to schedule meetings to permit participation of government representatives engaged in the work of other relevant chapters in this Agreement. The GRP Committee may also invite interested persons to contribute to its work.

7. The GRP Committee shall provide an annual report to the Commission on its activities.

Article 28.19. Contact Points

Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 30.5 (Agreement Coordinator and Contact Points). A Party shall promptly notify the other Parties of any material changes to its contact point.

Article 28.20. Application of Dispute Settlement

1. Recognizing that a mutually acceptable solution can often be found outside recourse to dispute settlement, a Party shall exercise its judgement as to whether recourse to dispute settlement under Chapter 31 (Dispute Settlement) would be fruitful.

2. Chapter 31 (Dispute Settlement) shall apply with respect to a responding Party as of one year after the date of entry into force of this Agreement for that Party.

3. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter except to address a sustained or recurring course of action or inaction that is inconsistent with a provision of this Chapter.

ANNEX 28-A. ADDITIONAL PROVISIONS CONCERNING THE SCOPE OF "REGULATIONS" AND "REGULATORY AUTHORITIES"

1. The following measures are not regulations for the purposes of this Chapter:

(a) for all Parties: general statements of policy or guidance that do not prescribe legally enforceable requirements;

(b) for Canada:

(i) a measure concerning:

(A) a military, foreign affairs, or national security function of the Government of Canada,

(B) public sector management, personnel, pensions, public property, loans, grants, benefits, or contracts,

(C) departmental organization, procedure, or practice,

(D) taxation, financial services or anti-money laundering measures, or

(E) federal, provincial, territorial relations and agreements and relations with Aboriginal Peoples, or

(ii) a measure that does not constitute a regulation under the Statutory Instruments Act,

(c) for Mexico: a measure concerning:

(i) taxation, specifically those related with contributions and their accessories,

(ii) public servants responsibilities,

(iii) agrarian and labor justice,

(iv) financial services or anti-money laundering measures,

(v) public prosecutor's office executing its constitutional functions, or

(vi) navy and defense; and

(d) for the United States: a measure concerning:

(i) a military or foreign affairs function of the United States,

(ii) agency management, personnel, public property, loans, grants, benefits, or contracts,

(iii) agency organization, procedure, or practice, or

(iv) financial services or anti-money laundering measures.

2. The following entities are not regulatory authorities for the purposes of this Chapter:

(a) for Canada: the Governor in Council; and

(b) for the United States: the President.

Chapter 29. PUBLICATION AND ADMINISTRATION

Section A. Publication and Administration

Article 29.1. Definitions

For the purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation (1) 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:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good,

or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

(1) For greater certainty, an interpretation or ruling that is not binding is not an administrative ruling of general application.

Article 29.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and the other Parties to become acquainted with them. To the extent possible, each Party shall make these measures available online.

2. Each Party shall, to the extent possible:

(a) publish in advance a measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and the other Parties a reasonable opportunity to comment on a proposed measure referred to in subparagraph (a).

3. Each Party shall ensure that its laws and regulations of general application at the central level of government are published on a free, publicly accessible website that is capable of performing searches for these laws and regulations by citation or through a word search, and shall ensure that this website is kept updated. Annex 29-A sets out each Party's websites.

Article 29.3. Administrative Proceedings

With a view to administering all measures of general application with respect to any matter covered by this Agreement in a consistent, impartial, and reasonable manner, each Party shall ensure in its administrative proceedings (2) applying measures referred to in Article 29.2.1 (Publication) to a particular person, good, or service of another Party in specific cases that:

(a) a person of another Party that is directly affected by a proceeding is provided, whenever possible and, in accordance with domestic procedures, with reasonable notice of the initiation of a proceeding, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issue in question;

(b) a person of another Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) the procedures are in accordance with its law.

(2) For greater certainty, administrative proceedings subject to this Article do not include proceedings that result in advisory opinions or decisions that are not legally binding.

Article 29.4. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. These tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, if required by its law, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law,

that the decision referred to in paragraph 2(b) be implemented by, and govern the practice of, the office or authority with respect to the administrative action at issue.

Section B. Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices (3)

(3)For greater certainty, the Parties confirm that the purpose of this Section is to ensure transparency and procedural fairness of relevant aspects of the Parties' applicable systems relating to pharmaceutical products and medical devices, without prejudice to the obligations in this Chapter, and not to modify a Party's system of health care in any other respects or a Party's rights to determine health expenditure priorities.

Article 29.5. Definitions

For the purposes of this Section:

national health care authority means, with respect to a Party listed in Annex 29-B (Party- Specific Definitions), the relevant entity or entities specified therein, and with respect to any other Party, an entity that is part of or has been established by a Party's central level of government to operate a national health care program; and

national health care program means a health care program in which a national health care authority makes the determinations or recommendations regarding the listing of pharmaceutical products or medical devices for reimbursement, or regarding the setting of the amount of that reimbursement.

Article 29.6. Principles

The Parties are committed to facilitating high-quality health care and continued improvements in public health for their nationals, including patients and the public. In pursuing these objectives, the Parties acknowledge the importance of the following principles:

(a) the importance of protecting and promoting public health and the important role played by pharmaceutical products and medical devices (4) in delivering high-quality health care;

(b) the importance of research and development, including innovation associated with research and development, related to pharmaceutical products and medical devices;

(c) the need to promote timely and affordable access to pharmaceutical products and medical devices, through transparent, impartial, expeditious, and accountable procedures, without prejudice to a Party's right to apply appropriate standards of quality, safety, and efficacy; and

(d) the need to recognize the value of pharmaceutical products and medical devices through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical product or medical device.

(4) For the purposes of this Section, each Party shall define the scope of the products subject to its laws and regulations for pharmaceutical products and medical devices in its territory, and make that information publicly available.

Article 29.7. Procedural Fairness

To the extent that a Party's national health care authority operates or maintains procedures for listing new pharmaceutical products or medical devices for reimbursement purposes, or setting the amount of that reimbursement, under a national health care program operated by the national health care authority, (5) (6) that Party shall:

(a) ensure that consideration of all formal and duly formulated proposals for such listing of pharmaceutical products or medical devices for reimbursement is completed within a specified period of time; (7)

(b) disclose procedural rules, methodologies, principles, and guidelines used to assess such proposals;

(c) afford applicants (8) and, if appropriate, the public, timely opportunities to provide comments at relevant points in the

decision-making process;

(d) provide applicants with written information sufficient to comprehend the basis for recommendations or determinations regarding the listing of new pharmaceutical products or medical devices for reimbursement by its national health care authority;

(e) make available:

(i) an independent review process, or

(i) an internal review process, such as by the same expert or group of experts that made the recommendation or determination, provided that the review process includes, at a minimum, a substantive reconsideration of the application,(9) and

that may be invoked at the request of an applicant directly affected by a recommendation or determination by a Party's national health care authority not to list a pharmaceutical product or a medical device for reimbursement; (10) and

(f) provide written information to the public regarding recommendations or determinations, while protecting information considered to be confidential under the Party's law.

(5) This Section does not apply to government procurement of pharmaceutical products and medical devices. If a public entity providing health care services engages in government procurement for pharmaceutical products or medical devices, formulary development and management with respect to that activity by the national health care authority shall be considered an aspect of such government procurement.

(6) This Section does not apply to procedures undertaken for the purpose of post-market subsidization of pharmaceutical products or medical devices procured by public health care entities if the pharmaceutical products or medical devices eligible for consideration are based on the products or devices that are procured by public health care entities.

(7) In those cases in which a Party's national health care authority is unable to complete consideration of a proposal within a specified period of time, the Party shall disclose the reason for the delay to the applicant and shall provide for another specified period of time for completing consideration of the proposal.

(8) For greater certainty, each Party may define the persons or entities that qualify as an "applicant" under its laws, regulations, and procedures.

(9) For greater certainty, the review process described in subparagraph (e)(i) may include a review process as described in subparagraph (e)(ii) other than one by the same expert or group of experts.

(10) For greater certainty, subparagraph (e) does not require a Party to provide more than a single review for a request regarding a specific proposal or to review, in conjunction with the request, other proposals or the assessment related to those other proposals. Further, a Party may elect to provide the review specified in subparagraph (e) either with respect to a draft final recommendation or determination, or with respect to a final recommendation or determination.

Article 29.8. Dissemination of Information to Health Professionals and Consumers

As is permitted to be disseminated under the Party's laws, regulations, and procedures, each Party shall permit a pharmaceutical product manufacturer to disseminate to health professionals and consumers through the manufacturer's website registered in the territory of the Party, and on other websites registered in the territory of the Party linked to that site, truthful and not misleading information regarding its pharmaceutical products that are approved for marketing in the Party's territory. A Party may require that the information include a balance of risks and benefits and encompass all indications for which the Party's competent regulatory authorities have approved the marketing of the pharmaceutical product.

Article 29.9. Consultations

1. To facilitate dialogue and mutual understanding of issues relating to this Section, each Party shall give sympathetic

consideration to and shall afford adequate opportunity for consultations regarding a written request by another Party to consult on any matter related to this Section. The consultations shall take place within three months of the delivery of the request, except in exceptional circumstances or unless the consulting Parties decide otherwise. (11)

2. Consultations shall involve officials responsible for the oversight of the national health care authority or officials from each Party responsible for national health care programs and other appropriate government officials.

(11) Nothing in this paragraph shall be construed as requiring a Party to review or change a decision regarding a specific application.

Article 29.10. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for any matter arising under this Section.

ANNEX 29-A. PUBLICATION OF LAWS AND REGULATIONS OF GENERAL APPLICATION

For the purpose of Article 29.2.3 (Publication), laws and regulations of general application of each Party are published in the following websites:

(a) For Canada:

http://laws.justice.gc.ca/eng/

See also: http://www.gazette.gc.ca/accueil-home-eng.html;

(b) For Mexico: www.diputados.gob.mx/LeyesBiblio/index.htm

See also:

www.dof.gob.mx; and

(c) For the United States:

https://www.govinfo.gov/help/whats-available

See also:

http://uscode.house.gov/ (laws)

https://www.ecfr.gov/cgi-bin/text-idx ?tpl=%2Findex.tpl (regulations)

ANNEX 29-B. PARTY-SPECIFIC DEFINITIONS

Further to the definition of national health care authority in Article 29.5 (Definitions), national health care authority means:

(a) For Canada, the Federal Drug Benefits Committee. For greater certainty, Canada does not currently operate a national health care program within the scope of this Annex.

(b) For the United States, the Centers for Medicare & Medicaid Services (CMS), with respect to CMS's role in making Medicare national coverage determinations.

Chapter 30. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 30.1. Establishment of the Free Trade Commission

The Parties hereby establish a Free Trade Commission (Commission), composed of government representatives of each Party at the level of Ministers or their designees.

Article 30.2. Functions of the Commission

1. The Commission shall:

(a) consider matters relating to the implementation or operation of this Agreement;

(b) consider proposals to amend or modify this Agreement;

(c) supervise the work of committees, working groups, and other subsidiary bodies established under this Agreement;

(d) consider ways to further enhance trade and investment between the Parties;

(e) adopt and update the Rules of Procedure and Code of Conduct applicable to dispute settlement proceedings; and

(f) review the roster established under Article 31.8 (Roster and Qualifications of Panelists) every three years and, when appropriate, constitute a new roster.

2. The Commission may:

(a) establish, refer matters to, or consider matters raised by, an ad hoc or standing committee, working group, or other subsidiary body;

(b) merge or dissolve a committee, working group, or other subsidiary body established under this Agreement in order to improve the functioning of this Agreement;

(c) consider and adopt, subject to completion of applicable legal procedures by each Party, a modification to this Agreement of:

(i) the Schedules to Annex 2-B (Tariff Commitments), by accelerating tariff elimination or improving market access conditions,

(ii) the adjustments to the Tariff Preferential Levels established in Chapter 6 (Textile and Apparel Goods),

(iii) the rules of origin established in Annex 4-B (Product-Specific Rules of Origin),

(iv) the minimum data requirements for the certification of origin,

(v) any provision as may be required to conform with any change to the Harmonized System, or

(vi) the lists of entities, covered goods and services, and thresholds contained in the Schedules to Chapter 13 (Government Procurement);

(d) develop arrangements for implementing this Agreement;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(f) issue interpretations of the provisions of this Agreement; (1)

(g) seek the advice of non-governmental persons or groups;

(h) modify any Uniform Regulations agreed jointly by the Parties under Article 5.16 (Uniform Regulations), subject to completion of applicable legal procedures by each Party; and

(i) take any other action as the Parties may decide.

3. For the purposes of an action with respect to a provision that applies only as between two Parties, including the interpretation, amendment, or modification of that provision, the Commission shall be composed of, and decisions taken by, the Commission representatives of those Parties.

(1) For greater certainty, interpretations issued by the Commission are binding for tribunals and panels established under Chapter 14 (Investment) and Chapter 31 (Dispute Settlement).

Article 30.3. Decision-Making

The Commission and subsidiary bodies established under this Agreement shall take decisions by consensus, except as otherwise provided in this Agreement, as otherwise decided by the Parties, or as provided for in Article 30.2.3 (Functions of the Commission). Unless otherwise provided in this Agreement, the Commission or a subsidiary body shall be deemed to have taken a decision by consensus if all Parties are present at a meeting when a decision is taken and no Party present at the meeting when a decision is taken objects to the proposed decision.

Article 30.4. Rules of Procedure of the Commission and Subsidiary Bodies

1. The Commission shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide, including as necessary to fulfil its functions under Article 30.2 (Functions of the Commission). Meetings of the Commission shall be chaired successively by each Party.

2. The Party chairing a meeting of the Commission shall provide any necessary administrative support for the meeting.

3. Unless otherwise provided in this Agreement, the Commission and a subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.

4. The Commission and a subsidiary body established under this Agreement may establish tules of procedures for the conduct of its work.

Article 30.5. Agreement Coordinator and Contact Points

1. Each Party shall designate an Agreement Coordinator to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.

2. Unless otherwise provided in this Agreement, each Party shall notify the other Parties in writing of its Agreement Coordinator and any other contact point provided for in this Agreement no later than 60 days after the date of entry into force of this Agreement.

3. Each Party shall promptly notify the other Parties, in writing, of any changes to its Agreement Coordinator or any other contact point.

4. On the request of another Party, the Agreement Coordinator shall identify the office or official responsible for a matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 30.6. The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

(a) establish and maintain a permanent office of its Section and be responsible for its operation and costs;

(b) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and

(c) notify the other Parties of the contact information for its Section's office.

3. The Secretariat shall:

(a) provide assistance to the Commission; provide administrative assistance to:

(i) panels and committees established under Section D of Chapter 10 (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), and

(ii) panels established under Chapter 31 (Dispute Settlement), including under Annex 31-A (Facility-Specific Rapid Response Labor Mechanism);

(c) be responsible for the payment of remuneration to and expenses of panels and committees established under Section D of Chapter 10 (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and panelists, assistants, and experts involved in dispute settlement proceedings under Chapter 31 (Dispute Settlement), including under Annex 31-A (Facility-Specific Rapid Response Labor Mechanism); and

(d) as the Commission may direct:

(i) support the work of other committees and groups established under this Agreement, and

(ii) otherwise facilitate the operation of this Agreement.

Chapter 31. DISPUTE SETTLEMENT

Section A. Dispute Settlement

Article 31.1. Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

Article 31.2. Scope

Unless otherwise provided for in this Agreement, the dispute settlement provisions of this Chapter apply:

(a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement;

(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation of this Agreement; or

(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 11 (Technical Barriers to Trade), Chapter 13 (Government Procurement), Chapter 15 (Cross-Border Trade in Services), or Chapter 20 (Intellectual Property Rights), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.

Article 31.3. Choice of Forum

1. If a dispute regarding a matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel under this Chapter or a panel or tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 31.4. Consultations

1. A Party may request consultations with another Party with respect to a matter described in Article 31.2 (Scope).

2. The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. The requesting Party shall deliver the request concurrently to the other Parties through their respective Sections of the Secretariat, including a copy to its Section.

4. A third Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing through their respective Sections of the Secretariat, including a copy to its Section, no later than seven days after the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. Unless the consulting Parties decide otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of delivery of the request for a matter concerning perishable goods; (1) or

(b) 30 days after the date of delivery of the request for all other matters.

6. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Article or other consultative provisions of this Agreement. To this end:

(a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure or other matter at issue might affect the operation or application of this Agreement;

(b) a Party that participates in the consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and

(c) the consulting Parties shall seek to avoid a resolution that adversely affects the interests of another Party under this Agreement.

7. Consultations may be held in person or by a technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties decide otherwise.

8. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

9. Consultations shall be confidential and without prejudice to the rights of a Party in another proceeding.

(1) For the purposes of this Chapter, perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24.

Article 31.5. Good Offices, Conciliation, and Mediation

1. Parties may decide at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

2. Proceedings that involve good offices, conciliation, or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings.

4. If the disputing Parties decide, good offices, conciliation, or mediation may continue while a dispute proceeds for resolution before a panel established under Article 31.6 (Establishment of a Panel).

Article 31.6. Establishment of a Panel

1. If the consulting Parties fail to resolve the matter within:

(a) 30 days after a Party has delivered a request for consultations under Article 31.4 (Consultations) in a matter regarding perishable goods;

(b) 75 days after a Party has delivered a request for consultations under Article 31.4 (Consultations); or

(c) another period as the consulting Parties may decide,

a consulting Party may request the establishment of a panel by means of a written notice delivered to the responding Party through its Section of the Secretariat.

2. The complaining Party shall circulate the written notice concurrently to the other Parties through their respective Sections of the Secretariat.

3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly.

4. On delivery of the request, the panel is established.

5. A third Party that considers it has a substantial interest in the matter is entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties through their respective Sections of the Secretariat, including a copy to its Section. The third Party shall deliver the notice no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

6. Unless the disputing Parties decide otherwise, the panel shall be established and perform its functions in a manner consistent with this Chapter and the Rules of Procedure.

7. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

Article 31.7. Terms of Reference

1. Unless the disputing Parties decide otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel); and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 31.17 (Panel Report).

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs a benefit within the meaning of Article 31.2 (Scope), the terms of reference shall so indicate.

3. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of a measure found not to conform with an obligation of this Agreement or to have caused nullification or impairment in the sense of Article 31.2(c) (Scope), the terms of reference shall so indicate.

Article 31.8. Roster and Qualifications of Panelists

1. The Parties shall establish, by the date of entry into force of this Agreement, and maintain a roster of up to 30 individuals who are willing to serve as panelists. Each Party shall designate up to 10 individuals. The Parties shall endeavor to achieve consensus on the appointments. If the Parties are unable to achieve consensus by one month after the date of entry into force of this Agreement, the roster shall be comprised of the designated individuals. The roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. If a Party fails to designate its individuals to the roster, the Parties may still request the establishment of panels under Article 31.6 (Establishment of a Panel). The Rules of Procedure, which shall be established by the date of entry into force of this Agreement, shall provide for how to compose a panel in such circumstances. Members of the roster may be reappointed. In the event that an individual is no longer able or willing to serve as a panelist, the relevant Party shall designate a replacement. The Parties shall endeavor to achieve consensus on the appointment. If the Parties are unable to achieve consensus by one month after the date the replacement is designated, the individual shall be added to the roster.

2. Each roster member and panelist shall:

(a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be selected on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, a Party; and

(d) comply with the Code of Conduct established by the Commission.

3. For a dispute arising under Chapter 23 (Labor) and Chapter 24 (Environment), each disputing Party shall select a panelist in accordance with the following requirements, in addition to those set out in paragraph 1:

(a) in a dispute arising under Chapter 23 (Labor), panelists other than the chair shall have expertise or experience in labor law or practice; and

(b) in a dispute arising under Chapter 24 (Environment), panelists other than the chair shall have expertise or experience in environmental law or practice.

4. In disputes regarding specialized areas of law not set out in paragraph 3, the disputing Parties should select panelists to ensure that the necessary expertise is available on the panel.

5. An individual shall not serve as a panelist in the same dispute in which the individual has participated pursuant to Articles 31.4 (Consultations) or Article 31.5 (Good Offices, Conciliation, and Mediation).

Article 31.9. Panel Composition

1. If there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.

(b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to decide on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.

(c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select an individual from the roster who is not a citizen of that Party. The complaining Party shall notify the responding Party of the selection no later than the next working day.

(d) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(e) If a disputing Party fails to select its panelists within that period, those panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

(f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select two individuals from the roster who are citizens of the complaining Party. The complaining Party shall notify the responding Party of the selections no later than the next working day.

2. If there are more than two disputing Parties, the following procedures apply:

(a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.

(b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel and, if the disputing Parties are unable to decide on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of that Party or those Parties.

(c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is not a citizen of either complaining Party. The complaining Parties shall notify the responding Party of the selection no later than the next working day.

(d) Within 15 days of selection of the chair, the responding Party shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party and the complaining Parties shall select two panelists who are citizens of the responding Party.

(e) If a disputing Party fails to select a panelist within that period, that panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (d).

(f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is a citizen of one of the complaining Parties. The complaining Parties shall notify the responding Party of the selection no later than the next working day.

3. A panelist shall normally be selected from the roster. A disputing Party may exercise a peremptory challenge against an individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed, unless no qualified and available individual on the roster possesses necessary specialized expertise, including as required by Article 31.8.3 (Roster and Qualifications of Panelists), in which case a disputing Party may not exercise a peremptory challenge but may raise concerns that the panelist does not meet the requirements of Article 31.8.2 (Roster and Qualifications of Panelists).

4. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult and if they concur the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 31.10. Replacement of Panelists

1. If a panelist resigns, is removed, or becomes unable to serve, the time frames applicable to that panel's proceeding shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended.

2. If a panelist resigns, is removed, or becomes unable to serve on the panel, a replacement panelist shall be appointed within 15 days in accordance with the same method used to select the panelist in accordance with Article 31.9 (Panel Composition).

3. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult. If they

concur on removing the panelist, they shall be removed and a new panelist shall be selected in accordance with this Article.

Article 31.11. Rules of Procedure for Panels

1. The Rules of Procedure, established under this Agreement in accordance with Article 30.2 (Functions of the Commission), shall ensure that:

(a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;

(b) subject to subparagraph (f), a hearing before the panel shall be open to the public, unless the disputing Parties decide otherwise;

(c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;

(d) subject to subparagraph (f), each disputing Party's written submissions, written version of an oral statement, and written response to a request or question from the panel, if any, are public as soon as possible after the documents are filed;

(e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(f) confidential information is protected;

(g) written submissions and oral arguments shall be made in one of the languages of the Parties, unless the disputing Parties decide otherwise; and

(h) unless the disputing Parties decide otherwise, hearings shall be held in the capital of the responding Party.

2. The Rules of Procedure shall include rules of evidence, which shall ensure that:

(a) the disputing Parties have the right to submit testimony in person or via declaration, affidavit, report, teleconference, or videoconference, and the disputing Parties and the panel the right to test the veracity of such testimony;

(b) the disputing Parties have the right to submit anonymous testimony and redacted evidence, in appropriate circumstances;

(c) the panel may request, on its own initiative or at the request of a disputing Party, that a Party make available documents or other information relevant to the dispute, and may take a failure to comply with such request into account in its decision; and

(d) a panel shall accept the disputing Parties' stipulations in advance of the hearing.

Article 31.12. Electronic Document Filing

The disputing Parties shall file all documents relating to a dispute, including written submissions, written versions of oral statements, and written responses to panel questions, by electronic means through their respective Sections of the Secretariat.

Article 31.13. Function of Panels

1. A panel's function is to make an objective assessment of the matter before it and to present a report that contains:

(a) findings of fact;

(b) determinations as to whether:

(i) the measure at issue is inconsistent with obligations in this Agreement,

(ii) a Party has otherwise failed to carry out its obligations in this Agreement,

(iii) the measure at issue is causing nullification or impairment within the meaning of Article 31.2 (Scope), or

(iv) any other determination requested in the terms of reference;

(c) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and

(d) the reasons for the findings and determinations.

2. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

3. Unless the disputing Parties decide otherwise, the panel shall perform its functions and conduct its proceeding in a manner consistent with this Chapter and the Rules of Procedure.

4. The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, done at Vienna on May 23, 1969.

5. A panel shall take its decision by consensus, except that, if a panel is unable to reach consensus, it may take its decision by majority vote.

6. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information or advice put before it under Article 31.15 (Role of Experts).

7. The panel shall draft its reports without the presence of any Party.

8. Panelists may present separate views on matters not unanimously agreed and shall not disclose the identity of which panelists are associated with majority or minority views.

Article 31.14. Third Party Participation

A Party that is not a disputing Party shall, on delivery of a written notice to the disputing Parties through their respective Sections of the Secretariat, including a copy to its Section, be entitled to attend any hearing, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of delivery of the request for the establishment of the panel under Article 31.6 (Establishment of a Panel).

Article 31.15. Role of Experts

At the request of a disputing party, or on Its own initiative, a panel may seek information or technical advice from a person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions decided on by the disputing Parties. The disputing Parties shall have an opportunity to comment on information or advice obtained under this Article.

Article 31.16. Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties decide otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

Article 31.17. Panel Report

1. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panelist. In cases of urgency related to perishable goods, the panel shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panelist.

2. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 1, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties decide otherwise.

3. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may decide.

4. After considering those comments, the panel, on its own initiative or on the request of a disputing Party, may:

(a) request the views of a Party;

(b) reconsider its report; or

(c) make a further examination that it considers appropriate.

5. The panel shall present a final report including any separate opinions on matters not unanimously agreed to the disputing Parties no later than 30 days after presentation of the initial report, unless the disputing Parties decide otherwise.

6. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall make the final report available to the public.

Article 31.18. Implementation of Final Report

1. Within 45 days from receipt of a final report that contains findings that:

(a) the measure at issue is inconsistent with a Party's obligations in this Agreement;

(b) a Party has otherwise failed to carry out its obligations in this Agreement; or

(c) the measure at issue is causing nullification or impairment within the meaning of Article 31.2 (Scope),

the disputing Parties shall endeavor to agree on the resolution of the dispute.

2. Resolution of the dispute can comprise elimination of the non-conformity or the nullification or impairment, if possible, the provision of mutually acceptable compensation, or another remedy the disputing Parties may agree.

Article 31.19. Non-Implementation - Suspension of Benefits

1. If the disputing Parties are unable to agree on a resolution to the dispute under Article 31.18 (Implementation of Final Report) within 45 days from receipt of the final report, the complaining Party may suspend the application to the responding Party of benefits of equivalent effect to the non-conformity or the nullification or impairment until the disputing Parties agree on a resolution to the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:

(a) a complaining Party should first seek to suspend benefits in the same sector as that affected by the measure or other matter that was the subject of the dispute; and

(b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector, may suspend benefits in other sectors unless otherwise provided for elsewhere in this Agreement.

3. If the responding Party considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel considers that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall provide its views as to the level of benefits it considers to be of equivalent effect.

4. If the panel's views are that the responding Party has not eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 3.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 31.20. Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a

Party that a Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit an agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 31.21. Private Rights

No Party shall provide for aright of action under its law against another Party on the ground that a measure of that other Party is inconsistent with this Agreement.

Article 31.22. Alternative Dispute Resolution

1. Each Party shall, to the extent possible, encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards and settlement agreements in those disputes, and to facilitate and encourage mediation procedures.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10 1958, or the Inter-American Convention on International Commercial Arbitration, done at Panama on January 30, 1975.

4. The Commission shall establish and maintain an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall, to the extent possible, encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area. The Committee shall report and provide recommendations to the Commission on general issues respecting the availability, use, and effectiveness of arbitration, mediation, online dispute settlement resolution, and other dispute resolution procedures for the prevention and resolution of those disputes in the free trade area.

ANNEX 31-A. FACILITY-SPECIFIC RAPID RESPONSE LABOR MECHANISM

Article 31-A.1. Scope and Purpose

1. The United States and Mexico are agreeing to this annex pursuant to Article 31.5.1 (Good Offices, Conciliation, and Mediation).

2. The purpose of the Facility-Specific, Rapid Response Labor Mechanism (the "Mechanism"), including the ability to impose remedies, is to ensure remediation of a Denial of Rights, as defined in Article 31-A.2, for workers at a Covered Facility, not to restrict trade. Furthermore, the Parties have designed this Mechanism to ensure that remedies are lifted immediately once a Denial of Rights is remediated.

3. The Parties shall make every attempt to cooperate and arrive at a mutually acceptable solution with respect to matters that can be raised through the Mechanism.

4. This Annex applies only as between Mexico and the United States.

Article 31-A.2. Denial of Rights

The Mechanism shall apply whenever a Party (the "complainant Party") has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the "respondent Party") under this Agreement (a "Denial of Rights"). (2)

(2) With respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered

facility under an enforced order of the National Labor Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).

Article 31-A.3. Lists of Rapid Response Labor Panelists

1. The Parties shall establish and maintain three lists of Rapid Response Labor Panelists who are willing to commit to being generally available to serve as Labor Panelists for the Mechanism.

2. By the date of entry into force of this Agreement, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non-nationals of either Mexico or the United States. If a Party fails to designate its individuals, the Parties may still request the establishment of panels under Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panel). The Rules of Procedure shall provide for how to compose a panel in such circumstances. Thereafter, at most six months from the date of entry into force of this Agreement, the Parties shall expand each list to at least five individuals each.

3. The Labor Panelists shall be appointed for a minimum of four years or until the Parties constitute new lists. Labor Panelists may be reappointed.

4. Each Labor Panelist shall have:

(a) expertise and experience in labor law and practice, and with the application of standards and rights as recognized by the International Labor Organization;

(b) be selected on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, a Party; and

(d) comply with the Code of Conduct established by the Commission for dispute settlement under this chapter.

5. If a list falls below five individuals within the four-year term, the relevant Party shall promptly appoint replacements. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

6. At the conclusion of the first four year term, and every four years thereafter, the Labor Panelists shall submit a report to the Parties commenting on the functioning of the Mechanism. The Parties shall make the report public.

7. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 30.2. The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

Article 31-A.4. Requests for Review and Remediation

1. If a Party has a domestic process for determining whether to invoke this mechanism and that process has started regarding a Covered Facility in the other Party, that Party shall notify the other Party within five business days of initiating such process. (3)

2. If a complainant Party has a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, it shall first request that the respondent Party conduct its own review of whether a Denial of Rights exists and, if the respondent Party determines that there is a Denial of Rights, it attempt to remediate within 45 days of the request. The complainant Party shall provide sufficient information for the respondent Party to conduct its review. The respondent Party shall have 10 days to notify the complainant Party as to whether it intends to conduct a review. If the respondent Party does not choose to conduct a review or does not notify within the 10-day period, the complainant Party may request the formation of a Rapid Response Labor Panel (the "panel") to conduct a separate verification and determination pursuant to Article 31-A.5.

3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights.

4. If the respondent Party chooses to conduct its review, it shall report in writing the results of the review and any remediation to the complainant Party at the end of the 45-day period.

5. If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party's determination and

immediately may request a panel verification and determination pursuant to Article 31-A.5.

6. If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights without interrupting trade.

7. If the Parties agree on a course of remediation, the respondent Party shall undertake the remediation by the date agreed to by the Parties and no remedy may be imposed by the complainant Party until the expiration of the agreed upon period.

8. If, after the agreed-upon date for remediation, the Parties disagree as to whether the Denial of Rights has been remediated, the complainant Party may provide written notice to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receiving such notice, request a determination from a panel as to whether the Denial of Rights persists pursuant to Article 31-A.5. The complainant Party may not impose remedies until the Panel makes its determination.

9. If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article 31-A.5.

10. At any point during the 10-day consultation period, the complainant Party may request that the panel be established, and the panel may proceed to confirm the petition. However, the panel may not issue a request for verification until the 10-day period expires.

(3) The United States intends to establish such a domestic process under which the United States government will strive to complete initial reviews of complaints received by the government about a Covered Facility in the other Party in 30 days.

Article 31-A.5. Requests for Establishment of Rapid Response Labor Panel

1. If, after the conditions precedent for the establishment of a panel under Article 31-A.4 are met, the complainant Party continues to have a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, that Party may submit to the Secretariat a petition:

(a) requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights; or

(b) requesting the establishment of a panel to determine whether there has been a Denial of Rights.

2. The Secretariat shall transmit the petition to the respondent Party.

3. The Secretariat shall within three business days from the date of the request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.

Article 31-A.6. Confirmation of Petition

A panel established under Article 31-A.5 shall have five business days after it is constituted to confirm that the petition:

(a) identifies a Covered Facility;

(b) identifies the respondent Party's laws relevant to the alleged Denial of Rights; and

(c) states the basis for the complainant Party's good faith belief that there is a Denial of Rights.

Article 31-A.7. Verification

1. Upon confirmation that the petition contains the relevant information, the panel shall issue a request for verification to the respondent Party. The panel shall formulate an appropriate request for verification, based on the circumstances and the nature of the allegations in the complainant Party's petition and any other submissions from the Parties.

2. In cases in which the respondent Party has concluded under Article 31-A.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and

Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.

3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition a document establishing the results of the respondent Party's investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.

4. In cases in which the respondent Party has determined under Article 31-A.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.

5. The respondent Party shall transmit a copy of the complainant Party's petition to the owner of the Covered Facility at issue.

6. The respondent Party shall reply within seven business days whether it consents to the verification request. If the respondent Party does not respond within that time it will be deemed to have refused the request.

7. If the respondent Party agrees to the verification, the panel shall conduct the verification within 30 days after receipt of the request by the respondent Party. Observers from both Parties may accompany the panel in any on-site verification if both Parties so request.

8. If the respondent Party agrees to the verification but there is interference with the verification or the panel is otherwise unable to conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter, the panel may take the Party's conduct into account in making its determination.

9. If the respondent Party refuses the request for a verification or does not respond within the period provided for in paragraph 6, the complainant Party may request that the panel make a determination as to whether there is a Denial of Rights.

10. If the complainant Party makes a petition under Article 31-A.5.1(b), the panel, at its discretion, may request a verification if it considers that a verification is necessary to assist them in making their determination and follow the procedures set out as for a verification request made under this Article.

Article 31-A.8. Panel Process and Determination

1. The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights within:

(a) 30 days after conducting a verification; or

(b) 30 days after it is constituted if there has not been a verification.

2. Before making its determination, the panel shall provide both Parties an opportunity to be heard.

3. In making its determination, the panel shall take the respondent Party's refusal to allow a verification into account.

4. If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights. The panel shall also provide its views on the severity of any denial of rights and, to the extent possible, identify the person or persons responsible for the Denial of Rights.

5. The panel's determination shall be in writing and shall be made public.

Article 31-A.9. Consultations and Remediation

After receipt of a determination by a panel that there has been a Denial of Rights, the complainant Party may impose remedies after providing written notice to the respondent Party at least 5 business days in advance. A respondent Party can request that consultations be held during that 5 day period.

Article 31-A.10. Remedies

1. Once the conditions precedent to the imposition of remedies have been met, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. The complainant Party shall select a remedy pursuant to paragraph 2 that is proportional to the severity of the Denial of Rights and shall take the panel's views on the severity of the Denial of Rights into account when selecting such remedies.

2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.

3. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods; or the imposition of penalties on such goods or services.

4. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination on at least two occasions, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods.

5. After the imposition of remedies, the Parties shall continue to consult on an ongoing basis in order to ensure the prompt remediation of the Denial of Rights and the removal of remedies.

6. If, as a result of those ongoing consultations, the Parties reach agreement that the Denial of Rights has been remediated, the complainant Party shall remove all remedies immediately. If the Parties are in disagreement as to whether the Denial of Rights has been remediated, the respondent Party may request an opportunity to demonstrate to the panel that it has taken action to remediate the Denial of Rights. The panel shall make a new determination within 30 days after receipt of the respondent Partyâs request, consistent with the procedures set out in Article 31-A.8. The complainant Party may request a new verification consistent with the procedures set out in Article 31-A.7.

7. If the panel determines that the Denial of Rights has not been remediated, the respondent Party may not request another determination for 180 days, and any remedies shall remain in place until the Parties agree that remediation has occurred or a panel determines that the Denial of Rights has been remediated.

Article 31-A.11. Good Faith Use of the Mechanism

If one Party considers that the other has not acted in good faith in its use of this Mechanism, either with regard to an invocation of the Mechanism itself or an imposition of remedies that are excessive in light of the severity of the Denial of Rights found by the panel, that Party may have recourse to the dispute settlement mechanism under Chapter 31. If a dispute settlement panel finds that a Party did not act in good faith in its use of this Mechanism, within 45 days from receipt of the final panel report under Article 31.17.5 (Panel Report), the Parties shall endeavor to agree to the resolution of the dispute. If the Parties are unable to resolve the dispute, the complainant Party may elect either to prevent the responding Party from using this Mechanism for a period of two years or another remedy permitted under Chapter 31.

Article 31-A.12. Expansion of Claims

In recognition of the importance of ensuring full compliance with the Labor Chapter; the commitment of the Parties to trade only in goods produced in compliance with such Chapter; if one of the Parties is found to have breached its obligations under Article 23.3 (Labor Rights) or Article 23.5 (Enforcement of Labor Laws) by a panel established under Article 31.6 (Establishment of a Panel), the complainant Party in that case may use this Mechanism with regard to the relevant law or laws at issue in that dispute for a period of two years or until the conclusion of the next joint review under Article 34.7 (Review and Term Extension), whichever is later.

Article 31-A.13. Review of Priority Sectors

The Parties shall review the list of priority sectors on an annual basis and determine whether to add any sectors to the list.

Article 31-A.14. Cooperation to Promote Compliance

Each Party shall cooperate with, and support efforts by, Covered Facilities to operate in a way to avoid a determination of a Denial of Rights.

Article 31-A.15. Definitions

For the purposes of this Annex:

Covered Facility means a facility in the territory of a Party that:

(i) produces a good or supplies a service traded between the Parties; or

(ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party,

and is a facility in a Priority Sector;

Party or Parties means Mexico and the United States singly or collectively;

Priority Sector means a sector that produces manufactured goods, (4) supplies services, or involves mining.

(4) For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement,

ANNEX 31-B. CANADA-MEXICO FACILITY-SPECIFIC RAPID RESPONSE LABOR MECHANISM

Article 31-B.1. Scope and Purpose

1. Canada and Mexico are agreeing to this Annex pursuant to Article 31.5.1 (Good Offices, Conciliation, and Mediation).

2. The purpose of the Facility-Specific, Rapid Response Labor Mechanism (the "Mechanism"), including the ability to impose remedies, is to ensure remediation of a Denial of Rights, as defined in Article 31-B.2, for workers at a Covered Facility, not to restrict trade. Furthermore, the Parties have designed this Mechanism to ensure that remedies are lifted immediately once a Denial of Rights is remediated.

3. The Parties shall make every attempt to cooperate and arrive at a mutually acceptable solution with respect to matters that can be raised through the Mechanism.

4. This Annex applies only as between Mexico and Canada.

Article 31-B.2. Denial of Rights

The Mechanism shall apply whenever a Party (the "complainant Party") has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the "respondent Party") under this Agreement (a "Denial of Rights"). (5)

(5) With respect to Canada, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the Canada Industrial Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).

Article 31-B.3. Lists of Rapid Response Labor Panelists

1. The Parties shall establish and maintain three lists of Rapid Response Labor Panelists who are willing to commit to being generally available to serve as Labor Panelists for the Mechanism.

2. By the date of entry into force of this Agreement, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non-nationals of either Mexico or Canada. If a Party fails to designate its individuals, the Parties may still request the establishment of panels under Article 31-B.5 (Requests for Establishment of Rapid Response Labor Panel). The Rules of Procedure shall provide for how to compose a panel in such circumstances. Thereafter, at most six months from the date of entry into force of this Agreement, the Parties shall expand each list to at least five individuals each.

3. The Labor Panelists shall be appointed for a minimum of four years or until the Parties constitute new lists. Labor Panelists may be reappointed.

4, Each Labor Panelist shall have:

(a) expertise and experience in labor law and practice, and with the application of standards and rights as recognized by the International Labor Organization;

(b) be selected on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, a Party; and

(d) comply with the Code of Conduct established by the Commission for dispute settlement under this chapter.

5. If a list falls below five individuals within the four-year term, the relevant Party shall promptly appoint replacements. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

6. At the conclusion of the first four year term, and every four years thereafter, the Labor Panelists shall submit a report to the Parties commenting on the functioning of the Mechanism. The Parties shall make the report public.

7. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 30.2. The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

Article 31-B.4. Requests for Review and Remediation

1. If a Party has a domestic process for determining whether to invoke this mechanism and that process has started regarding a Covered Facility in the other Party, that Party shall notify the other Party within five business days of initiating such process. (6)

2. If a complainant Party has a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, it shall first request that the respondent Party conduct its own review of whether a Denial of Rights exists and, if the respondent Party determines that there is a Denial of Rights, it attempt to remediate within 45 days of the request. The complainant Party shall provide sufficient information for the respondent Party to conduct its review. The respondent Party shall have 10 days to notify the complainant Party as to whether it intends to conduct a review. If the respondent Party does not choose to conduct a review or does not notify within the 10-day period, the complainant Party may request the formation of a Rapid Response Labor Panel (the "panel") to conduct a separate verification and determination pursuant to Article 31-B.5.

3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights. (7)

4. If the respondent Party chooses to conduct its review, it shall report in writing the results of the review and any remediation to the complainant Party at the end of the 45-day period.

5. If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party's determination and immediately may request a panel verification and determination pursuant to Article 31-B.5.

6. If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights without interrupting trade.

7. If the Parties agree on a course of remediation, the respondent Party shall undertake the remediation by the date agreed to by the Parties and no remedy may be imposed by the complainant Party until the expiration of the agreed upon period.

8. If, after the agreed-upon date for remediation, the Parties disagree as to whether the Denial of Rights has been remediated, the complainant Party may provide written notice to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receiving such notice, request a determination from a panel as to whether the Denial of Rights persists pursuant to Article 31-B.5. The complainant Party may not impose remedies until the Panel makes its determination.

9. If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article 31-B.5.

10. At any point during the 10-day consultation period, the complainant Party may request that the panel be established,

and the panel may proceed to confirm the petition. However, the panel may not issue a request for verification until the 10-day period expires.

(6) Canada intends to establish such a domestic process under which the Canadian government will strive to complete initial reviews of complaints received by the government about a Covered Facility in the other Party in 30 days.

(7) For Canada, this paragraph will be applied with the necessary changes to conform with Canadian law.

Article 31-B.5. Requests for Establishment of Rapid Response Labor Panel

1. If, after the conditions precedent for the establishment of a panel under Article 31-B.4 are met, the complainant Party continues to have a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, that Party may submit to the Secretariat a petition:

(a) requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights; or

(b) requesting the establishment of a panel to determine whether there has been a Denial of Rights.

2. The Secretariat shall transmit the petition to the respondent Party.

3. The Secretariat shall within three business days from the date of the request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.

Article 31-B.6. Confirmation of Petition

A panel established under Article 31-B.5 shall have five business days after it is constituted to confirm that the petition:

(a) identifies a Covered Facility;

(b) identifies the respondent Party's laws relevant to the alleged Denial of Rights; and

(c) states the basis for the complainant Party's good faith belief that there is a Denial of Rights.

Article 31-B.7. Verification

1. Upon confirmation that the petition contains the relevant information, the panel shall issue a request for verification to the respondent Party. The panel shall formulate an appropriate request for verification, based on the circumstances and the nature of the allegations in the complainant Party's petition and any other submissions from the Parties.

2. In cases in which the respondent Party has concluded under Article 31-B.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.

3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition a document establishing the results of the respondent Party's investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.

4. In cases in which the respondent Party has determined under Article 31-B.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.

5. The respondent Party shall transmit a copy of the complainant Party's petition to the owner of the Covered Facility at issue.

6. The respondent Party shall reply within seven business days whether it consents to the verification request. If the respondent Party does not respond within that time it will be deemed to have refused the request.

7. If the respondent Party agrees to the verification, the panel shall conduct the verification within 30 days after receipt of the request by the respondent Party. Observers from both Parties may accompany the panel in any on-site verification if both Parties so request.

8. If the respondent Party agrees to the verification but there is interference with the verification or the panel is otherwise unable to conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter, the panel may take the Party's conduct into account in making its determination.

9. If the respondent Party refuses the request for a verification or does not respond within the period provided for in paragraph 6, the complainant Party may request that the panel make a determination as to whether there is a Denial of Rights.

10. If the complainant Party makes a petition under Article 31-B.5.1(b), the panel, at its discretion, may request a verification if it considers that a verification is necessary to assist them in making their determination and follow the procedures set out as for a verification request made under this Article.

Article 31-B.8. Panel Process and Determination

1. The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights within:

(a) 30 days after conducting a verification; or

(b) 30 days after it is constituted if there has not been a verification.

2. Before making its determination, the panel shall provide both Parties an opportunity to be heard.

3. In making its determination, the panel shall take the respondent Party's refusal to allow a verification into account.

4. If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights. The panel shall also provide its views on the severity of any denial of rights and, to the extent possible, identify the person or persons responsible for the Denial of Rights.

5. The panel's determination shall be in writing and shall be made public.

Article 31-B.9. Consultations and Remediation

After receipt of a determination by a panel that there has been a Denial of Rights, the complainant Party may impose remedies after providing written notice to the respondent Party at least 5 business days in advance. A respondent Party can request that consultations be held during that 5 day period.

Article 31-B.10. Remedies

1. Once the conditions precedent to the imposition of remedies have been met, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. The complainant Party shall select a remedy pursuant to paragraph 2 that is proportional to the severity of the Denial of Rights and shall take the panel's views on the severity of the Denial of Rights into account when selecting such remedies.

2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.

3. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods; or the imposition of penalties on such goods or services.

4. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination on at least two

occasions, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods.

5. After the imposition of remedies, the Parties shall continue to consult on an ongoing basis in order to ensure the prompt remediation of the Denial of Rights and the removal of remedies.

6. If, as a result of those ongoing consultations, the Parties reach agreement that the Denial of Rights has been remediated, the complainant Party shall remove all remedies immediately. If the Parties are in disagreement as to whether the Denial of Rights has been remediated, the respondent Party may request an opportunity to demonstrate to the panel that it has taken action to remediate the Denial of Rights. The panel shall make a new determination within 30 days after receipt of the respondent Party's request, consistent with the procedures set out in Article 31-B.8. The complainant Party may request a new verification consistent with the procedures set out in Article 31-B.7.

7. If the panel determines that the Denial of Rights has not been remediated, the respondent Party may not request another determination for 180 days, and any remedies shall remain in place until the Parties agree that remediation has occurred or a panel determines that the Denial of Rights has been remediated.

Article 31-B.11. Good Faith Use of the Mechanism

If one Party considers that the other has not acted in good faith in its use of this Mechanism, either with regard to an invocation of the Mechanism itself or an imposition of remedies that are excessive in light of the severity of the Denial of Rights found by the panel, that Party may have recourse to the dispute settlement mechanism under Chapter 31. If a dispute settlement panel finds that a Party did not act in good faith in its use of this Mechanism, within 45 days from receipt of the final panel report under Article 31.17.5 (Panel Report), the Parties shall endeavor to agree to the resolution of the dispute. If the Parties are unable to resolve the dispute, the complainant Party may elect either to prevent the responding Party from using this Mechanism for a period of two years or another remedy permitted under Chapter 31.

Article 31-B.12. Expansion of Claims

In recognition of the importance of ensuring full compliance with the Labor Chapter; the commitment of the Parties to trade only in goods produced in compliance with such Chapter; if one of the Parties is found to have breached its obligations under Article 23.3 (Labor Rights) or Article 23.5 (Enforcement of Labor Laws) by a panel established under Article 31.6 (Establishment of a Panel), the complainant Party in that case may use this Mechanism with regard to the relevant law or laws at issue in that dispute for a period of two years or until the conclusion of the next joint review under Article 34.7 (Review and Term Extension), whichever is later.

Article 31-B.13. Review of Priority Sectors

The Parties shall review the list of priority sectors on an annual basis and determine whether to add any sectors to the list.

Article 31-B.14. Cooperation to Promote Compliance

Each Party shall cooperate with, and support efforts by, Covered Facilities to operate in a way to avoid a determination of a Denial of Rights.

Article 31-B.15. Definitions

For the purposes of this Annex:

Covered Facility means a facility in the territory of a Party that:

(I) produces a good or supplies a service traded between the Parties; or

(Ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party,

and is a facility in a Priority Sector; Party or Parties means Mexico and Canada singly oor collectively;

Priority Sector means a sector that produces manufactured goods, (8) supplies services, or involves mining.

(8) For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement.

Chapter 32. EXCEPTIONS AND GENERAL PROVISIONS

Section A. Exceptions

Article 32.1. General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 11 (Technical Barriers to Trade), Chapter 12 (Sectoral Annexes), and Chapter 22 (State-Owned Enterprises and Designated Monopolies), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. (1)

2. For the purposes of Chapter 15 (Cross-Border Trade in Services), Chapter 16 (Temporary Entry for Business Persons), Chapter 18 (Telecommunications), Chapter 19 (Digital Trade), (2) and Chapter 22 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b), and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, mutatis mutandis. (3)

3. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 and GATS Article XIV(b) include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

4. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorized by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which the Party taking action and the Party against which the action is taken are party.

(1) For the purposes of Chapter 22 (State-Owned Enterprises and Designated Monopolies), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or a designated monopoly) affecting the purchase, production, or sale of goods, or affecting activities the end result of which is the production of goods.

(2) This paragraph is without prejudice to whether a Party considers a digital product to be a good or service.

(3) For the purposes of Chapter 22 (State-Owned Enterprises and Designated Monopolies), Article XTV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or a designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

Article 32.2. Essential Security

1. Nothing in this Agreement shall be construed to:

(a) require a Party to furnish or allow access to information the disclosure of which it determines to be contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 32.3. Taxation Measures

1. For the purposes of this Article:

designated authorities means:

(a) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance;

(b) for Mexico, the Deputy Minister of Revenue of the Ministry of Finance and Public Credit (Subsecretario de Ingresos); and

(c) for the United States, the Assistant Secretary of the Treasury (Tax Policy), or any successor of these designated authorities as notified in writing to the other Parties;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures include excise duties, but do not include:

(a) a "customs duty" as defined in Article 1.4 (General Definitions); or

(b) the measures listed in subparagraphs (b), (c), and (d) of that definition.

2. Except as provided in this Article, this Agreement does not apply to a taxation measure.

3. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of any inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.

4. In the case of a tax convention between two or more Parties, if an issue arises as to whether an inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the Parties in question. The designated authorities of those Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those designated authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 31 (Dispute Settlement) or, as between the United States and Mexico, Annex 14-D (Mexico-United States Investment Disputes), or Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts) until the expiry of the six month period, or any other period as may have been agreed by the designated authorities. A panel or tribunal established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties in question made under this paragraph.

5. Notwithstanding paragraph 3:

(a) Article 2.3 (National Treatment) and other provisions of this Agreement that are necessary to give effect to that Article apply to taxation measures to the same extent as does Article III of the GATT 1994, including its interpretative notes; and

(b) Article 2.15 (Export Duties, Taxes, or other Charges) applies to taxation measures.

6. Subject to paragraph 3:

(a) Article 15.3 (National Treatment) and Article 17.3 (National Treatment) apply to a taxation measure on income, on capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that this subparagraph does not prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory;

(b) Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 15.3 (National Treatment), Article 15.4 (Most-Favored- Nation Treatment), Article 17.3 (National Treatment), Article 17.4 (Most- Favored-Nation Treatment), and Article 19.4 (Non-Discriminatory Treatment of Digital Products) apply to a taxation measure, other than a taxation measure on income, on capital gains, on the taxable capital of corporations, or taxes on estates, inheritances, gifts, and generation-skipping transfers; and

(c) Article 19.4 (Non-Discriminatory Treatment of Digital Products) apply to a taxation measure on income, on capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular digital products, except that this subparagraph does not prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular digital products on requirements to provide the digital product in its territory,

but nothing in the Articles referred to in subparagraphs (a), (b), and (c) apply to:

(d) a most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(e) a non-conforming provision of a taxation measure in existence as of the date of entry into force of NAFTA 1994;

(f) the continuation or prompt renewal of a non-conforming provision of a taxation measure in existence as of the date of entry into force of NAFTA 1994;

(g) an amendment to a non-conforming provision of a taxation measure in existence as of the date of entry into force of NAFTA 1994 to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of

those Articles;

(h) the adoption or enforcement of a new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including a taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods, or services of the Parties; (4)

(i) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, or other arrangement to provide pension, or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over that trust, plan, fund, or other arrangement; or

(j) an excise duty on insurance premiums to the extent that the excise duty would, if levied by another Party, be covered by subparagraphs (e), (f), or (g).

7. Subject to paragraph 3, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article 14.10.2 (Performance Requirements), Article 14.10.3, and Article 14,10.4 apply to a taxation measure.

8. Article 14.8 (Expropriation and Compensation) applies to a taxation measure. However, as between the United States and Mexico, no investor may invoke Article 14.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor of the United States or Mexico that seeks to invoke Article 14.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the designated authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 14.D.3 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of the referral, the investor of the United States or Mexico may submit its claim to arbitration under, as applicable, Annex 14.D.3 (Submission of a Claim to Arbitration) or paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).

(4) The Parties understand that this subparagraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

Article 32.4. Temporary Safeguards Measures

1. For the purposes of this Article:

foreign direct investment means a type of investment by an investor of a Party in the territory of another Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment, and tends to be undertaken in order to establish a lasting relationship; for example, ownership of at least 10 percent of the voting power of an enterprise over a period of at least 12 months generally would be considered a foreign direct investment.

2. This Agreement does not prevent a Party from adopting or maintaining a restrictive measure with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

3. This Agreement does not prevent a Party from adopting or maintaining a restrictive measure with regard to payments or transfers relating to the movements of capital:

(a) in the event of serious balance of payments and external financial difficulties or threats thereof; or

(b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

4. A measure adopted or maintained under paragraph 2 or 3 must:

(a) not be inconsistent with Article 14.4 (National Treatment), Article 14.5 (Most- Favored-Nation Treatment), Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 17.3 (National Treatment), and Article 17.4 (Most-Favored-Nation Treatment); (5)

(b) be consistent with the Articles of Agreement of the IMF;

(c) avoid unnecessary damage to the commercial, economic, and financial interests of another Party;

(d) not exceed those necessary to deal with the circumstances described in paragraph 2 or 3;

(e) be temporary and be phased out progressively as the situations specified in paragraph 2 or 3 improve, and shall not exceed 12 months in duration; however, in exceptional circumstances, a Party may extend that measure for one additional period of one year, by notifying the other Parties in writing within 30 days of the extension;

(f) not be inconsistent with Article 14.8 (Expropriation and Compensation); (6)

(g) in the case of restrictions on capital outflows, not interfere with investors' ability to earn a market rate of return in the territory of the restricting Party on assets invested in the territory of the restricting Party by an investor of a Party that are restricted from being transferred out of the territory of the restricting Party; and

(h) not be used to avoid necessary macroeconomic adjustment.

5. As soon as practicable after a Party imposes a measure under paragraph 2, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review and approval under Article VII of the Articles of Agreement of the IMF;

(b) consistent with its obligations under the Articles of Agreement of the IMF, enter into good faith consultations with the IMF on economic adjustment measures necessary to remove the restrictions in 3(a); and (c) adopt or maintain economic policies consistent with those consultations.

6. Measures referred to in paragraphs 2 and 3 shall not apply to payments or transfers relating to foreign direct investment.

7. A Party shall endeavor to provide that a measure it adopts or maintains under paragraph 2 or 3 be price-based, and if that measure is not price-based, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Parties of the measure.

8. In the case of trade in goods, Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, set out in Annex 1A to the WTO Agreement, are incorporated into and made part of this Agreement, mutatis mutandis. Any measure it adopts or maintains under this paragraph shall not impair the relative benefits accorded to another Party under this Agreement as compared to the treatment of a non-Party.

9. A Party adopting or maintaining a measure under paragraph 2, 3, or 8 shall:

(a) notify, in writing, the other Parties of the measure, including any changes in it, along with the rationale for their imposition, within 30 days of its adoption;

(b) present, as soon as possible, either a time schedule or the conditions necessary for their removal;

(c) promptly publish the measure; and

(d) promptly commence consultations with the other Parties in order to review the measure.

(i) In the case of capital movements, promptly respond to any other Party that requests consultations in relation to the measure, provided that such consultations are not otherwise taking place outside of this Agreement.

(ii) In the case of current account restrictions, if consultations in relation to the measure ate not taking place under the framework of the WTO Agreement, a Party, if requested, shall promptly commence consultations with any interested Party.

(5) Without prejudice to the general interpretation of the Articles listed in this sub-paragraph, the fact that a measure a Party adopts or maintains pursuant to paragraph 2 or 3 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with those Articles.

(6) For greater certainty, a measure referred to in paragraph 2 or32 may be non-discriminatory regulatory actions by a Party that is designed and applied to protect legitimate public welfare objectives as referred to in Annex 14-B.3(b) (Expropriation).

Article 32.5. Indigenous Peoples Rights

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party

from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to indigenous peoples. (7)

(7) For greater certainty, for Canada the legal obligations include those recognized and affirmed by section 35 of the Constitution Act 1982 or those set out in self-government agreements between a central or regional level of government and indigenous peoples.

Article 32.6. Cultural Industries

1. For the purposes of this Article, "cultural industry" means a person engaged in the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale, or exhibition of film or video recordings;

(c) the production, distribution, sale, or exhibition of audio or video music recordings;

(d) the publication, distribution, or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.

2. This Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry, except as specifically provided in Article 2.4 (Treatment of Customs Duties) or Annex 15-D (Programming Services).

3. With respect to Canadian goods, services, and content, the United States and Mexico may adopt or maintain a measure that, were it adopted or maintained by Canada, would have been inconsistent with this Agreement but for paragraph 2.

4. Notwithstanding any other provision of this Agreement, a Party may take a measure of equivalent commercial effect in response to an action by another Party that would have been inconsistent with this Agreement but for paragraph 2 or 3. 5. Notwithstanding Article 31.3 (Choice of Forum): (a) dispute regarding a measure taken under paragraph 4 shall be settled exclusively under this Agreement unless a Party seeking to establish a panel under Article 31.6 (Establishment of a Panel) has been unable to do so within 90 days of the date of delivery of the request for consultations under Article 31.4 (Consultations); and

(b) a panel established under Article 31.6 (Establishment of a Panel) with respect to that challenge shall have jurisdiction and may make findings only with respect to:

(i) whether an action to which another Party responds is a measure adopted or maintained with respect to a cultural industry for purposes of this Article, and

(ii) whether the responsive action of a Party is of "equivalent commercial effect" to the relevant action of the other Party.

Section B. General Provisions

Article 32.7. Disclosure of Information

This Agreement does not require a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or 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.

Article 32.8. Personal Information Protection (8)

1. For the purposes of this Article:

personal information means information, including data, about an identified or identifiable natural person.

2. Each Party shall adopt or maintain a legal framework that provides for the protection of personal information. (9) In the development of this legal framework, each Party should take into account principles and guidelines of relevant international bodies, such as the APEC Privacy Framework and the OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013).

3. The Parties recognize that, pursuant to paragraph 2 key principles include: limitation on collection; choice; data quality;

purpose specification; use limitation; security safeguards; transparency; individual participation; and accountability.

4. Each Party shall endeavor to adopt non-discriminatory practices in protecting natural persons from personal information protection violations occurring within its jurisdiction.

5. Each Party shall publish information on the personal information protections it provides, including how:

(a) individuals can pursue a remedy; and

(b) an enterprise can comply with legal requirements.

6. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. The Parties shall endeavor to exchange information on the mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them. The Parties recognize that the APEC Cross-Border Privacy Rules system is a valid mechanism to facilitate cross-border information transfers while protecting personal information.

7. The Parties shall endeavor to foster cooperation between appropriate government agencies regarding investigations on matters involving personal information protection and encourage the development of mechanisms to assist users to submit cross-border complaints regarding protection of personal information.

(8) This Article does not apply to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

(9) For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information, or personal data protection law, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

Article 32.9. Access to Information

Each Party shall maintain a legal framework that allows a natural person in its territory to obtain access to records held by the central level of government, subject to reasonable terms and limitations specified in the Party's law, provided that the terms and limitations applying to natural persons of another Party in the Party's territory are no less favorable than those applying to natural persons of the Party, or of another country, in the Party's territory. (10)

(10) For the United States, this provision applies to "agencies," as defined at 5 U.S.C. 551(1).

Article 31.10. Non-Market Country FTA

1. For the purposes of this Article:

non-market country is a country:

(a) that on the date of signature of this Agreement, a Party has determined to be a non-market economy for purposes of its trade remedy laws; and

(b) with which no Party has signed a free trade agreement.

2. At least 3 months prior to commencing negotiations, a Party shall inform the other Parties of its intention to commence free trade agreement negotiations with a non-market country.

3. Upon request of another Party, a Party intending to commence free trade negotiations with a non-market country shall provide as much information as possible regarding the objectives for those negotiations.

4. As early as possible, and no later than 30 days before the date of signature, a Party intending to sign a free trade agreement with a non-market country shall provide the other Parties with an opportunity to review the full text of the agreement, including any annexes and side instruments, in order for the Parties to be able to review the agreement and assess its potential impact on this Agreement. If the Party involved requests that the text be treated as confidential, the other Parties shall maintain the confidentiality of the text.

5. Entry by a Party into a free trade agreement with a non-market country will allow the other Parties to terminate this Agreement on six months' notice and replace this Agreement with an agreement as between them (bilateral agreement).

6. The bilateral agreement shall be comprised of all the provisions of this Agreement, except those provisions that the relevant Parties agree are not applicable as between them.

7. The relevant Parties shall utilize the six months' notice period to review this Agreement and determine whether any amendments should be made in order to ensure the proper operation of the bilateral agreement.

8. The bilateral agreement enters into force 60 days after the date on which the last party to the bilateral agreement has notified the other party that it has completed its applicable legal procedures.

Article 32.11. Specific Provision on Cross-Border Trade In Services, Investment, and State-Owned Enterprises and Designated Monopolies for Mexico

With respect to the obligations In Chapter 14 (Investment), Chapter 15 (Cross-BorderTrade in Services), and Chapter 22 (State-Owned Enterprises and Designated Monopolies), Mexico reserves the right to adopt or maintain a measure with respect to a sector or sub-sector for which Mexico has not taken a specific reservation in its Schedules to Annexes I, II, and IV of this Agreement, only to the extent consistent with the least restrictive measures that Mexico may adopt or maintain under the terms of applicable reservations and exceptions to parallel obligations in other trade and investment agreements that Mexico has ratified prior to entry into force of this Agreement, including the WTO Agreement, without regard to whether those other agreements have entered into force.

Article 32.12. Exclusion from Dispute Settlement

A decision by Canada following a review under the Investment Canada Act, R.S.C. 1985, c.28 (1st Supp.), with respect to whether or not to permit an investment that is subject to review, shall not be subject to the dispute settlement provisions of Chapter 31 (Dispute Settlement).

Chapter 33. MACROECONOMIC POLICIES AND EXCHANGE RATE MATTERS

Article 33.1. Definitions

For the purposes of this Chapter:

Article IV Staff Report means the report prepared by a staff team of the International Monetary Fund (IMF) for consideration by the Executive Board of the IMF in the context of a country’s adherence to Article IV, Section 3(b), of the IMF Articles of Agreement;

competitive devaluation means an action undertaken by an exchange rate authority of a Party for the purpose of preventing effective balance of payments adjustment or gaining an unfair competitive advantage in trade over another Party;

Currency Composition of Official Foreign Exchange Reserves (COFER) database means the IMF database based on voluntary and confidential participation by IMF member countries, which distinguishes monetary authorities' claims on non-residents denominated in U.S. dollars, euros, pounds sterling, Japanese yen, Swiss francs, and other currencies on a quarterly basis starting in 2005;

exchange rate means the price of one currency in terms of another currency;

exchange rate assessment means the IMF staff's evaluation of a country's exchange rate as presented to the IMF Executive Board as part of a Party's Article IV consultation or as published in the annual External Sector Report, consistent with recommendation 4 in the IMF 2011 Triennial Surveillance Review - Overview Paper, prepared on August 29, 2011;

Executive Board discussion means the discussion by the IMF Executive Board of the Party's Article IV Staff Report leading to the conclusion of the Article IV consultation, as defined in Paragraph 27 in Part IM Section A of the Modernizing the Legal Framework for Surveillance - An Integrated Surveillance Decision, Revised Proposed Decisions, prepared on July 17, 2012;

exports means all goods that subtract from the stock of material resources of a country by leaving its economic territory (International Merchandise Trade Statistics: Concepts and Definitions 2010, Chapter I, section A 1.2 of the United Nations);

foreign exchange means the official currency of another Party or a non-Party;

foreign exchange market means a market, wherever located, in which participants can purchase or sell foreign exchange;

foreign exchange reserves means claims of an exchange rate authority or monetary authority on nonresidents in the form of foreign banknotes, bank deposits, treasury bills, short- and long-term government securities, and other claims usable in the event of balance of payments need, as defined in the IMF's Balance of Payments and International Investment Position Manual, Sixth Edition (BPM6), paragraphs 6.86-6.92;

forward foreign exchange contract means a commitment to transact, at a designated future date and agreed-upon exchange rate, in a specified amount of specified foreign exchange (paragraph FD 28, Financial Derivatives, A supplement to the Fifth Edition (1993) of the IMF's Balance of Payments and International Investment Position Manual),

forward positions means predetermined short-term net drains on foreign currency assets in the form of forwards, futures, and swaps, as defined in Item II.2 of the Reserves Data Template in the IMF International Reserves and Foreign Currency Liquidity: Guidelines for a Data Template (2013);

imports means all goods that add to the stock of material resources of a country by entering its economic territory (International Merchandise Trade Statistics: Concepts and Definitions 2010, Chapter I, section A 1.2 of the United Nations);

intervention means the purchase or sale, or the purchase or sale of a forward position, under the direction of an exchange rate authority, of foreign exchange reserves involving the currency of the intervening Party and at least one other currency;

portfolio capital flows means cross-border transactions and positions involving debt or equity securities, other than those included in direct investment or reserve assets, as defined in the IMF's Balance of Payments and International Investment Position Manual, Sixth Edition (BPM6), paragraphs 6.54-6.57;

principal representative of a Party means a senior official of the exchange rate or fiscal or monetary authority of a Party; (1) and

spot foreign exchange market means the foreign exchange market in which participants transact for immediate delivery.

(1) For greater certainty, the principal representatives of Mexico include a senior officer of the Ministry of Finance and Public Credit and a senior officer of the Central Bank.

Article 33.2. General Provisions

1. The Parties affirm that market-determined exchange rates are fundamental for smooth macroeconomic adjustment and promote strong, sustainable, and balanced growth.

2. The Parties recognize the importance of macroeconomic stability in the region to the success of this Agreement and that strong economic fundamentals and sound policies are essential to macroeconomic stability, and contribute to strong and sustainable growth and investment.

3. The Parties share the objective of pursuing policies that strengthen underlying economic fundamentals, foster growth and transparency, and avoid unsustainable external imbalances.

Article 33.3. Scope

This Chapter does not apply with respect to the regulatory or supervisory activities or monetary and related credit policy and related conduct of an exchange rate or fiscal or monetary authority of a Party. (2)

(2) For greater certainty, the term "exchange rate or fiscal or monetary authority of a Party" includes a central bank of a Party.

Article 33.4. Exchange Rate Practices

1. Each Party confirms that it is bound under the IMF Articles of Agreement to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage.

2. Each Party should:

(a) achieve and maintain a market-determined exchange rate regime;

(b) refrain from competitive devaluation, including through intervention in the foreign exchange market; and

(c) strengthen underlying economic fundamentals, which reinforces the conditions for macroeconomic and exchange rate stability.

3. Each Party should inform promptly another Party and discuss if needed when an intervention has been carried out by the Party with respect to the currency of that other Party.

Article 33.5. Transparency and Reporting

1. Each Party shall disclose publicly:

(a) monthly foreign exchange reserves data and forward positions according to the IMF's Data Template on International Reserves and Foreign Currency Liquidity, no later than 30 days after the end of each month;

(b) monthly interventions in spot and forward foreign exchange markets, no later than seven days after the end of each month;

(c) quarterly balance of payments portfolio capital flows, no later than 90 days after the end of each quarter; and

(d) quarterly exports and imports, no later than 90 days after the end of each quarter.

2. Each Party shall consent to the public disclosure by the IMF of:

(a) each IMF Article IV Staff Report on the country of the Party, including the exchange rate assessment, within four weeks of the IMF Executive Board discussion; and

(b) confirmation of the Party's participation in the IMF COFER database.

3. If the IMF does not disclose publicly any items listed in paragraph (2) with respect to a Party, that Party shall request that the IMF disclose publicly those items.

Article 33.6. Macroeconomic Committee

1. The Parties hereby establish a Macroeconomic Committee composed of principal representatives of each Party. Article 30.2.2(b) (Functions of the Commission) does not apply to the Macroeconomic Committee.

2. The Macroeconomic Committee shall monitor the implementation of this Chapter and its further elaboration.

3. The Macroeconomic Committee shall meet within one year after the date of entry into force of this Agreement, and at least annually thereafter, unless the Parties decide otherwise.

4. The Macroeconomic Committee shall, at each annual meeting, consider:

(a) the macroeconomic and exchange rate policies of each Party, and their consequences on diverse macroeconomic variables, including domestic demand, external demand, and the current account balance;

(b) issues, challenges, or efforts to strengthen capacity with respect to transparency or reporting; and

(c) undertaking other activities as the Macroeconomic Committee may decide.

5. At each annual meeting, or as necessary, the Macroeconomic Committee may consider whether any provisions of this Chapter, except Article 33.3 (Scope), should be amended to reflect changes in monetary policy and the financial markets or should be interpreted. A decision by consensus of the Macroeconomic Committee that a provision of this Chapter should be amended shall be deemed to be a decision by consensus of the Commission to amend the provision. Amendments shall enter into force as provided for in Article 34.3 (Amendments). An interpretation issued pursuant to a decision by consensus of the Macroeconomic Committee shall be deemed to be an interpretation issued pursuant to a decision by consensus of the Commission.

6. The Commission shall not take any decision to amend or interpret a provision of this Chapter except as provided in paragraph 5.

Article 33.7. Principal Representative Consultations

1. A principal representative of a Party may request expedited bilateral consultations with a principal representative of another Party with respect to policies or measures of another Party that the principal representative of the requesting Party considers associated with competitive devaluation, the targeting of exchange rates for competitive purposes, fulfillment of the transparency and reporting commitments in Article 33.5 (Transparency and Reporting), or any other issue that the principal representative of the Party may wish to raise with respect to Articles 33.4 (Exchange Rate Practices) or 33.5 (Transparency and Reporting). A Party engaged in bilateral consultations may invite the Party not engaged in those consultations to participate and provide input.

2. If a principal representative of a Party requests bilateral consultations, the principal representatives (or their designees) of the consulting Parties shall meet within 30 days of the request to arrive at a mutually satisfactory resolution of the matter within 60 days of their initial meeting.

3. If a principal representative of a Party requests bilateral consultations with respect to another Party's fulfillment of the transparency and reporting commitments in Article 33.5 (Transparency and Reporting), whether circumstances disrupted the practical ability of the other Party to disclose publicly the items listed in that Article shall be taken into account in the consultations, with the objective of arriving at a mutually satisfactory resolution of the matter.

4. If there is failure to arrive at a mutually satisfactory resolution in any consultations under this Article, the consulting Parties may request that the IMF, consistent with its mandate:

(a) undertake rigorous surveillance of the macroeconomic and exchange rate policies and data transparency and reporting policies of the requested Party; or

(b) initiate formal consultations and provide input, as appropriate.

Article 33.8. Dispute Settlement

1. A Party may have recourse to dispute settlement under Chapter 31 (Dispute Settlement), as modified by this Article, only with respect to a claim that a Party has failed to carry out an obligation under Article 33.5 (Transparency and Reporting) in a recurring or persistent manner and has not remediated that failure during consultations under Article 33.7 (Principal Representative Consultations). (3)

2. When selecting panelists to compose a panel under Article 31.9 (Panel Composition), each disputing Party shall select panelists so that each panelist:

(a) has served as a senior official of an exchange rate or fiscal or monetary authority of a Party or the International Monetary Fund; and

(b) meets the qualifications set out in paragraphs (2)(b) through (2)(d) of Article 31.8 (Roster and Qualification of Panelists).

3. A panel established under Article 31.6 (Establishment of a Panel) to make a determination as to whether a Party has failed to carry out an obligation under Article 33.5 (Transparency and Reporting) in a recurring or persistent manner and has not remediated that failure during consultations under Article 33.7 (Principal Representative Consultations) and a panel reconvened to make a determination on the proposed suspension of benefits, in accordance with Article 31.19 (Non-Implementation - Suspension of Benefits), may seek the views of the IMF in accordance with Article 31.15 (Role of Experts).

4. When a panel's determination is that a Party has failed to carry out an obligation under Article 33.5 (Transparency and Reporting) in a recurring or persistent manner, and has not remediated that failure during consultations under Article 33.7 (Principal Representative Consultations), the complaining Party may not suspend benefits that are in excess of benefits equivalent to the effect of that failure. In suspending benefits under Article 31.19 (Non-Implementation - Suspension of Benefits), the complaining Party may take into account only the failure to carry out an obligation under Article 33.5 (Transparency and Reporting) and not any other action or alleged failure by the responding Party.

(3) For greater certainty, this Article does not provide a basis for any matter arising under any other provision of this Agreement, including Article 31.2(c) (Scope).

Chapter 34. FINAL PROVISIONS

Article 34.1. Transitional Provision from NAFTA 1994

1. The Parties recognize the importance of a smooth transition from NAFTA 1994 to this Agreement.

2. Issues under consideration, including documents or other work under development, by the Commission or a subsidiary body of NAFTA 1994 may be continued under any equivalent body in this Agreement, subject to any decision by the Parties on whether and in what manner that continuation is to occur.

3. Membership of the Committee established under Article 2022 of NAFTA 1994 may be maintained for the Committee under Article 31.22.4 (Alternative Dispute Resolution).

4. Chapter Nineteen of NAFTA 1994 shall continue to apply to binational panel reviews related to final determinations published by a Party before the entry into force of this Agreement.

5. With respect to the matters set out in paragraph 4, the Secretariat established under Article 30.6 of this Agreement shall perform the functions assigned to the NAFTA 1994 Secretariat under Chapter Nineteen of the NAFTA 1994 and under, for Chapter Nineteen, the domestic implementation procedures adopted by the Parties in connection therewith, until the binational panel has rendered a decision and a Notice of Completion of Panel Review has been issued by the Secretariat pursuant to the Rules of Procedure for Article 1904 Binational Panel Reviews.

6. With respect to claims for preferential tariff treatment made under NAFTA 1994, the Parties shall make appropriate arrangements to grant these claims in accordance with NAFTA 1994 after entry into force of this Agreement. The provisions of Chapter Five of NAFTA 1994 will continue to apply through those arrangements, but only to goods for which preferential tariff treatment was claimed in accordance with NAFTA 1994, and will remain applicable for the period provided for in Article 505 (Records) of that Agreement.

Article 34.2. Annexes, Appendices, and Footnotes

The annexes, appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 34.3. Amendments

1. The Parties may agree, in writing, to amend this Agreement.

2. An amendment shall enter into force 60 days after the date on which the last Party has provided written notice to the other Parties of the approval of the amendment in accordance with its applicable legal procedures, or such other date as the Parties may agree.

Article 34.4. Amendment of the WTO Agreement

In the event of an amendment of the WTO Agreement that amends a provision that the Parties have incorporated into this Agreement, the Parties shall, unless otherwise provided in this Agreement, consult on whether to amend this Agreement.

Article 34.5. Entry Into Force

This Agreement enters into force in accordance with paragraph 2 of the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada.

Article 34.6. Withdrawal

A Party may withdraw from this Agreement by providing written notice of withdrawal to the other Parties. A withdrawal shall take effect six months after a Party provides written notice to the other Parties. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

Article 34.7. Review and Term Extension

1. This Agreement shall terminate 16 years after the date of its entry into force, unless each Party confirms it wishes to continue this Agreement for a new 16-year term, in accordance with the procedures set forth in paragraphs 2 through 6.

2. On the sixth anniversary of the entry into force of this Agreement, the Commission shall meet to conduct a "joint review" of the operation of this Agreement, review any recommendations for action submitted by a Party, and decide on any appropriate actions. Each Party may provide recommendations for the Commission to take action at least one month before the Commission's joint review meeting takes place.

3. As part of the Commission's joint review, each Party shall confirm, in writing, through its head of government, if it wishes to extend the term of this Agreement for another 16-year period. If each Party confirms its desire to extend this Agreement, the term of this Agreement shall be automatically extended for another 16 years and the Commission shall conduct a joint review and consider extension of this Agreement term no later than at the end of the next six-year period.

4. If, as part of a six-year review, a Party does not confirm its wish to extend the term of this Agreement for another 16-year period, the Commission shall meet to conduct a joint review every year for the remainder of the term of this Agreement. If one or more Parties did not confirm their desire to extend this Agreement for another 16-year term at the conclusion of a given joint review, at any time between the conclusion of that review and expiry of this Agreement, the Parties may automatically extend the term of this Agreement for another 16 years by confirming in writing, through their respective head of government, their wish to extend this Agreement for another 16-year period.

5. At any point when the Parties decide to extend the term of this Agreement for another 16- year period, the Commission shall conduct joint reviews every six years thereafter, and the Parties shall have the ability to extend this Agreement after each joint review pursuant to the procedures set forth in paragraphs 3 and 4.

6. At any point in which the Parties do not all confirm their wish to extend the term of this Agreement, paragraph 4 shall apply.

Article 34.8. Authentic Texts

The English, French, and Spanish texts of this Agreement are equally authentic, unless provided elsewhere in this Agreement.

ANNEX I. EXPLANATORY NOTE

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 14.12 (Non- Conforming Measures) and 15.7 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 14.4 (National Treatment) or 15.3 (National Treatment);

(b) Article 14.5 (Most-Favored-Nation Treatment) or 15.4 (Most-Favored-Nation Treatment);

(c) Article 14.10 (Performance Requirements);

(d) Article 14.11 (Senior Management and Boards of Directors);

(e) Article 15.5 (Market Access); or

(f) Article 15.6 (Local Presence).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 14.12.1(a) (Non-Conforming Measures) and 15.7.1(a) (Non-Conforming Measures), do not apply to the non-conforming aspects of the law, regulation, or other measure, as set out in paragraph 3;

(d) Level of Government indicates the level of government maintaining the scheduled measure(s);

(e) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(f) Description, as indicated in the introductory note for each Party's Schedule, either sets out the non-conforming measure

or provides a general non-binding description of the measure for which the entry is made.

3. Articles 15.6 (Local Presence) and 15.3 (National Treatment) are separate disciplines and a measure that is only inconsistent with Article 15.6 (Local Presence) need not be reserved against Article 15.3 (National Treatment).

ANNEX I. SCHEDULE OF MEXICO

INTRODUCTORY NOTE

1. Description provides a general non-binding description of the measure for which the entry is made.

2. In accordance with Article 14.12 (Non-Conforming Measures) and Article 15.7 (Non- Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

3. In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant provisions of the Chapters against which the entry is taken. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. For the purposes of this Annex:

CMAP means the Mexican Classification of Activities and Products 1994 (Clasificación Mexicana de Actividades y Productos) numbers as set out by the National Institute for Statistics and Geography (Instituto Nacional de Estadistica y Geografía);

CNIE means the National Commission on Foreign Investments (Comisión Nacional de Inversiones Extranjeras);

Concession means an authorization granted by the Mexican State to a person to exploit a natural resource or supply a service, for which Mexican nationals and Mexican enterprises are granted priority over foreigners;

Foreigners' exclusion clause means the express provision in an enterpriseâs by-laws, stating that the enterprise shall not allow a foreigner, directly or indirectly, to become a partner or shareholder of the enterprise; and

SCT means the Ministry of Communications and Transportation (Secretaria de Comunicaciones y Transportes).

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 27.

Foreign Investment Law (Ley de Inversión Extranjera), Title II, Chapters I and II.

Regulations to the Foreign Investment Law and the National Registry of Foreign Investments (Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras), Title Il, Chapters I and II.

Description: Investment

No foreign national or foreign enterprise may acquire property tights (dominio directo) over land and water in a 100-kilometer strip along the country's borders or in a 50-kilometer strip inland from its coasts (Restricted Zone).

A Mexican enterprise without a foreigners' exclusion clause may acquire property rights (dominio directo) over real estate located in the Restricted Zone, used for non-residential purposes. Notice of the acquisition must be given to the Ministry of

Foreign Affairs (Secretaria de Relaciones Exteriores or SRE) within 60 business days from the date of acquisition.

No Mexican enterprise without a foreigners' exclusion clause may acquire property rights (dominio directo) over real estate located in the Restricted Zone, used for residential purposes.

Pursuant to the procedure described below, a Mexican enterprise without a foreigners' exclusion clause may acquire rights for the use and enjoyment over real estate in the Restricted Zone, used for residential purposes. This procedure shall also apply when a foreign national or a foreign enterprise seeks to acquire rights for the use and enjoyment over real estate in the Restricted Zone regardless of the purpose for which the real estate is used.

A permit from the SRE is required for a credit institution to acquire, as a trustee, rights to real estate located in the Restricted Zone, when the purpose of the trust is to allow the use and enjoyment of such real estate, without granting real property rights thereof, and the trust beneficiary is a Mexican enterprise without a foreigners' exclusion clause, or the foreign national or foreign enterprise referred to above.

The terms "use" and "enjoyment" of the real estate located in the Restricted Zone mean the rights to use or enjoy such real estate, including, as applicable, obtaining benefits, products, and, in general, any yield resulting from lucrative operation and exploitation through third parties or through a credit institution acting as trustee.

The duration of the trust referred to in this entry shall be for a maximum period of 50 years, which may be renewed on request of the interested party.

The SRE can verify at any time the compliance with the conditions under which the permits referred to in this entry are granted, as well as the submission and veracity of the notices mentioned above.

The SRE shall decide on the permits, considering the economic and social benefits that these operations could have on the Nation.

A foreign national or a foreign enterprise seeking to acquire teal estate outside the Restricted Zone, shall previously submit to the SRE a statement agreeing to consider themselves a Mexican national for the above mentioned purposes, and waiving its right to invoke the protection of its government with respect to such real estate.

Sector:All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4) Market Access (Article 15.5)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title VI, Chapter III.

Description: Investment and Cross-Border Trade in Services

In order to evaluate an application submitted for its consideration (an acquisition or establishment of investments in restricted activities as set out in this Schedule), the CNIE shall take into account the following criteria:

(a) the effects on employment and training of workers;

(b) the technological contribution;

(c) the compliance with the environmental provisions contained in the environmental legislation; and

(d) in general, the contribution to increase the competitiveness of the Mexican productive system.

When deciding on an application, the CNIE may only impose requirements that do not distort international trade and that are not prohibited by Article 14.10 (Performance Requirements).

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4)

Level of Government:Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

As qualified by the Description element.

Description: Investment

A favorable resolution from the CNIE is required for an investor of another Party or its investments to participate, directly or indirectly, in more than 49 percent of the ownership interest of a Mexican enterprise in an unrestricted sector, if the total value of the assets of the Mexican enterprise exceeds the applicable threshold at the time the application for acquisition is submitted.

The applicable threshold for the review of an acquisition of a Mexican enterprise shall be the amount determined by the CNIE. The threshold at the date of entry into force of this Agreement for Mexico will be the equivalent in Mexican pesos to 955,835,000 US dollars, using the official exchange rate on August 31, 2018.

The threshold will be adjusted each year according to the nominal growth rate of the Mexican Gross Domestic Product, as published by the National Institute for Statistics and Geography (Instituto Nacional de Estadística y Geografía).

Sector:All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4) Senior Management and Boards of Directors (Article 14.11)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 25.

General Law of Cooperative Companies (Ley General de Sociedades Cooperativas), Title I and Title II, Chapter II.

Federal Labor Law (Ley Federal del Trabajo), Title I.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Description: Investment

No more than 10 percent of the persons participating in a Mexican cooperative production enterprise may be foreign nationals.

An investor of another Party or its investments may only own, directly or indirectly, up to 10 percent of the ownership interest in a Mexican cooperative production enterprise.

No foreign nationals may engage in general administrative functions or perform managerial activities in a Mexican cooperative production enterprise.

A cooperative production enterprise is an enterprise the members of which combine their personal work, whether physical or intellectual, with the purpose of producing goods or services.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned:National Treatment (Article 14.4)

Level of Government:Central

Measures: Federal Law to Foster the Microindustry and Handicraft Activity (Ley Federal para el Fomento de la Microindustria y la Actividad Artesanal), Chapters I, II, III and IV.

Description: Investment

Only Mexican nationals may apply for a license (cédula) to qualify as a microindustry enterprise.

No Mexican microindustry enterprises may have a foreign person as partner.

The Federal Law to Foster the Microindustry and Handicraft Activity (Ley Federal para el Fomento de la Microindustria y Actividad Artesanal) defines a "microindustry enterprise" as an enterprise integrated by up to 15 workers, that is engaged in the transformation of goods, and the annual sales of which do not exceed the amount determined periodically by the Ministry of Economy (Secretaría de Economía).

Sector: Agriculture, Livestock, Forestry, and Lumber Activities

Sub-Sector: Agriculture, livestock or forestry

Industry Classification: CMAP 1111 Agriculture

CMAP 1112 Livestock and hunting (limited to livestock)

CMAP 1200 Forestry and felling Trees

Obligations Concerned: National Treatment (Article 14.4)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 27.

Agrarian Law (Ley Agraria), Title VI.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Description: Investment

Only a Mexican national or a Mexican enterprise may own land for agriculture, livestock or forestry purposes. Such enterprise must issue a special type of share ("T" share) representing the value of that land at the time of its acquisition.

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of "T" shares.

Sector:Retail Trade

Sub-Sector:Sale of non-food products in specialized establishments

Industry Classification:

CMAP 623087 Retail Trade of Firearms, Cartridges and Munitions

CMAP 612024 Wholesale Trade Not Elsewhere Classified (limited to firearms, cartridges and munitions)

Obligations Concerned:National Treatment (Article 14.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Description: Investment

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that is engaged in the sale of explosives, firearms, cartridges, ammunition, and fireworks, excluding the acquisition and use of explosives for industrial and extractive activities, and the preparation of explosive mixtures for such activities.

Sector: Communications

Sub-Sector:Broadcasting (radio and free to air television)

Industry Classification:CMAP 941104 Private Production and Transmission of Radio Programs (limited to production and transmission of sound broadcasting (radio) programs)

CMAP 941105 Private Services of production, Transmission and Retransmission of Television Programming (limited to

transmission and retransmission of free-to-air television programming)

Obligations Concerned:National Treatment (Article 14.4 and Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Articles 28 and 32

Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión), Title IV, Chapters I, III and IV, title XI, Chapter II.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapter III.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapters II and III.

Regulations to the Foreign Investment Law and the National Registry for Foreign Investments (Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras), Title VI.

General Guidelines for the granting of the concessions referred to in Title Four of the Federal Telecommunications and Broadcasting Law (Lineamientos Generales para el otorgamiento de las concesiones a que se refiere el Título Cuarto de la Ley Federal de Telecomunicaciones y Radiodifusión).

Description: Investment and Cross-Border Trade in Services

According to their purposes, sole concessions and frequency band concessions will be granted only to Mexican nationals or enterprise constituted under Mexican Laws and regulations.

An investor of a Party or its investments may participate up to 49 percent in a concessionaire enterprise supplying broadcasting services. This cap shall apply according to the reciprocity existent with the country in which the investor or trader who ultimately controls it, directly or indirectly, is constituted.

For the purposes of the paragraph above, a favorable opinion of the CNIE is required before granting the sole concession for providing broadcasting services in which foreign investment participate.

No concession, the rights conferred therein, facilities, auxiliary services, offices, or accessories and properties affected thereto, may be assigned, encumbered, pledged, or given in trust, mortgaged, or transferred totally or partially to any foreign government or state.

Concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective to promote, develop, and preserve language, culture, knowledge, tradition, identity and internal rules that, under principles of gender equality, allow the integration of indigenous women in the accomplishment of the purposes for which the concession is granted.

The State shall guarantee that broadcasting promotes the values of national identity. A broadcasting concessionaire shall use and stimulate local and national artistic values and expressions of Mexican culture, according to the characteristics of its programming. Daily programming with personal performances shall include more time covered by Mexicans.

Sector: Communications

Sub-Sector:Telecommunications (including resellers and restricted television and audio service)

Industry Classification: CMAP 720006 Other Telecommunication Services

CMAP 720006 Other Telecommunications services (Not including enhanced or Value Added Services)

CMAP 502003 Telecommunications installation

CMAP 720006 Other Telecommunications Services (limited to resellers)

CMAP 502004 Other special installations

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article

28 and 32.

Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión), Title IV, Chapters I, III and IV, Title V, Chapter VIII, and Title VI, Unique Chapter.

General Means of Communication Law (Ley de Vías Generales de Comunicación).

Foreign Investment Law (Ley de Inversión Extranjera) Title I, Chapter II.

Regulations to the Foreign Investment Law and the National Registry of Foreign Investments (Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras), Title VI.

General Guidelines for the granting of the concessions referred to in Title Four of the Federal Telecommunications and Broadcasting Law (Lineamientos Generales para el otorgamiento de las concesiones a que se refiere el Título Cuarto de la Ley Federal de Telecomunicaciones y Radiodifusion).

Rules of general character that establish the terms and requisites for the granting of telecommunications authorizations established in the Federal Telecommunications and Broadcasting Law (Reglas de carácter general que establecen los plazos y requisitos para el otorgamiento de autorizaciones en materia de telecomunicaciones establecidas en la Ley Federal de Telecomunicaciones y Radiodifusión).

General Guidelines on the Authorization to Lease Radio Spectrum (Lineamientos Generales sobre la Autorización de Arrendamiento del Espectro Radioeléctrico).

Guidelines for the granting of the Authorization Registration, for the use and development of radio spectrum frequency bands for secondary use (Lineamientos para el otorgamiento de la Constancia de Authorización, para el uso y aprovechamiento de bandas de frecuencias del espectro radioeléctrico para uso secundario).

Description: Investment and Cross-Border Trade in Services

According to their purposes, sole concessions and frequency band concessions will be granted only to a Mexican national or enterprise constituted under Mexican Laws and regulations.

Concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective to promote, develop, and preserve their language, culture, knowledge, tradition, identity and internal rules that, under principles of gender equality, allow the integration of indigenous women in the accomplishment of the purposes for which the concession is granted.

Concessions for indigenous social use shall only be granted to indigenous people and indigenous communities in Mexico without any kind of foreign investment.

No concession, the rights conferred therein, facilities, auxiliary services, offices or accessories and properties affected thereto, shall be assigned encumbered, pledged, or given in trust, mortgaged, or transferred totally or partially to any foreign government or state.

Only a Mexican national or an enterprise established under Mexican laws may obtain authorization to provide telecommunication services as reseller without being a concessionaire.

Under the General Guidelines on the Authorization to Lease Radio Spectrum, a company interested in becoming a lessee of frequency bands must obtain a sole concession for commercial use or a sole concession for private use.

An applicant for an authorization for secondary use of radio spectrum frequency bands must appoint a legal address in Mexico City.

Sector: Communications

Sub-Sector: Transportation

Industry Classification: CMAP 7100 Transport

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Ports Law (Ley de Puertos), Chapter IV.

Regulatory Law of the Railway Service (Ley Reglamentaria del Servicio Ferroviario), Chapter II, Section III.

Civil Aviation Law (Ley de Aviación Civil), Chapter III, Section III

Airports Law (Ley de Aeropuertos), Chapter IV.

Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters III and V.

Description: Investment

No foreign government or foreign State may invest, directly or indirectly, in a Mexican enterprise engaged in transportation and other general means of communications.

Sector: Transportation

Sub-Sector: Land transportation and water transportation

Industry Classification: CMAP 501421 Construction of Maritime and River Works

CMAP 501422 Construction of Roadworks and Works for Land Transport

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III.

Ports Law (Ley de Puertos), Chapter IV.

Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter II.

Description:Investment and Cross-Border Trade in Services

A concession granted by the SCT is required to build and operate, or only operate, marine or river works.

A concession is also required to build, operate, exploit, conserve, or maintain federal roads and bridges.

Only a Mexican national or a Mexican enterprise may obtain these concessions.

Sector: Printing, Editing and Associated Industries

Sub-Sector: Newspaper publishing

Industry Classification: CMAP 342001 Publishing of Newspapers, Magazines and Periodicals (limited to newspapers)

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

As qualified by the Description element.

Description: Investment

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the printing or publication of daily newspapers written primarily for a Mexican audience and distributed in the territory of Mexico.

For the purposes of this entry, daily newspapers are those whose distribution is not free and that are published at least seven days a week.

Sector: Manufacture of Goods

Sub-Sector:Explosives, fireworks, firearms and cartridges

Industry Classification: CMAP 352236 Manufacture of Explosives and Fireworks

CMAP 382208 Manufacture of Firearms and Cartridges

Obligations Concerned: National Treatment (Article 14.4)

Level of Government:Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Description: Investment

An investors of another Party or its investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that manufactures explosives, fireworks, firearms, cartridges, and ammunition, excluding the preparation of explosive mixtures for industrial and extractive activities.

Sector: Fishing

Sub-Sector:Fishing-related services

Industry Classification: CMAP 1300 Fishing

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

General Law on Sustainable Fishing and Aquaculture (Ley General de Pesca y Acuacultura Sustentables), Title Six, Chapter IV; Title Seven, Chapter II.

Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter I; Title II, Chapter IV, Title Three, Chapter II.

Ports Law (Ley de Puertos), Chapters I, IV and VI.

Regulations to the Fishing Law (Reglamento de la Ley de Pesca), Title Two, Chapter I; Chapter II, Sixth Section.

Description: Cross-Border Trade in Services

A permit issued by the Secretariat of Agriculture, Livestock, Rural Development, Fisheries, and Food (Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca, y Alimentación, SAGARPA) through the National Commission of Aquaculture and Fishing (Comisión Nacional de Acuacultura y Pesca, CONAPESCA); or by the SCT, within the scope of their competence, is required to engage in fishing activities.

A permit issued by SAGARPA is required to carry out activities, such as fishing jobs needed to justify applications for a concession, and the installation of fixed fishing gear in federal waters. This permit shall be given preferentially to residents of local communities. In equal circumstances, an application from an indigenous community shall be preferred.

An authorization issued by the SCT is required for foreign-flagged vessels to provide dredging services.

A permit issued by the SCT is required to supply port services related to fishing, like loading operations and supply vessels, maintenance of communication equipment, electricity works, garbage or waste collection and sewage disposal. Only a Mexican national or a Mexican enterprise may obtain such permit.

Sector:Fishing

Sub-Sector: Fishing

Industry Classification: CMAP 130011 Fishing on the High Seas

CMAP 130012 Coastal Fishing

CMAP 130013 Fresh Water Fishing

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: General Law on Sustainable Fishing and Aquaculture (Ley General de Pesca y Acuacultura Sustentables), Title VI, Chapter IV; Title VII, Chapter I; Title XIII, Unique Chapter; Title XIV, Chapters I, II and III.

Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title II, Chapter I.

Sea Federal Law (Ley Federal del Mar), Title I, Chapters I and III.

National Waters Law (Ley de Aguas Nacionales), Title I, and Title IV, Chapter I.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Regulations to the Fishing Law (Reglamento de la Ley de Pesca), Title I, Chapter I; Title II, Chapters I, III, IV, V, and VI: Title III, Chapters III and IV.

Description: Investment

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico performing coastal fishing, fresh water fishing, and fishing in the Exclusive Economic Zone, excluding aquaculture.

A favorable resolution from the CNIE is required for an investor of another Party or its investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico performing fishing on the high seas.

Sector: Educational Services

Sub-Sector: Private schools

Industry Classification: CMAP 921101 Private Pre-school Educational Services

CMAP 921102 Private Primary Educational Services

CMAP 921103 Private Secondary Educational Services

CMAP 921104 Private High School Educational Services

CMAP 921105 Private Higher Education Services

CMAP 921106 Private Education Services that Combine Pre- school, Primary, Secondary, High School and Higher Education Levels

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Law for the Coordination of Higher Education (Ley para la Coordinación de la Educación Superior), Chapter II.

General Law of Education (Ley General de Educación), Chapter III.

Description:Investment

A favorable resolution from the CNIE is required for an investor of another Party or its investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that provides pre-school, primary, secondary, high school, higher, and combined private educational services.

Sector: Professional, Technical and Specialized Services

Sub-Sector: Medical services

Industry Classification: CMAP 9231 Medical, Dental and Veterinary Services provided by the Private Sector (limited to medical services)

Obligations Concerned:National Treatment (Article 15.3)

Level of Government: Central

Measures:Federal Labor Law (Ley Federal del Trabajo), Chapter I.

Description: Cross-Border Trade in Services

Only a Mexican national licensed as doctor in the territory of Mexico may supply in-house medical services in Mexican enterprises.

Sector: Professional, Technical and Specialized Services

Sub-Sector: Specialized personnel

Industry Classification: CMAP 951012 Services of Customs and Representative Agencies

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3)

Level of Government: Central

Measures: Customs Law (Ley Aduanera), Title II, Chapters I and III, and Title VII, Chapter I.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II.

Description: Investment and Cross-Border Trade in Services

Only a Mexican national by birth may be a customs broker.

Only a custom broker acting as consignee or legal representative (mandatario) of an importer or exporter, as well as a customs broker's assignee, may carry out the formalities related to the customs clearance of the goods of such importer or exporter.

An investor of another Party or its investments may not participate, directly or indirectly, in a customs broker's agency.

Sector: Professional, Technical and Specialized Services

Sub-Sector: Specialized services (Commercial Notary Public)

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Commercial Notary Public Federal Law (Ley Federal de Correduría Pública), Articles 7, 8, 12 and 15.

Regulations to the Commercial Notary Public Federal Law (Reglamento de la Ley Federal de Correduría Pública), Chapter I, and Chapter II, Sections I and II.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II.

Description: Investment and Cross-Border Trade in Services

Only a Mexican national by birth may be licensed to be a commercial notary public (corredor público).

A commercial notary public may not have a business affiliation with any person for the supply of commercial notary public services.

A commercial notary public shall establish an office in the place where he has been authorized to practice.

Only a Mexican national or a Mexican enterprise with foreigners' exclusion clause may obtain such license. Foreign investment may not participate in commercial notary public activities and companies, directly or through trusts, agreements, social pacts, or statutory, pyramiding schemes, or other mechanism that gives it some control or participation.

Sector: Professional, Technical and Specialized Services

Sub-Sector:Professional services

Industry Classification: CMAP 951002 Legal Services (including foreign legal consultancy)

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Most-Favored-Nation Treatment (Article 14.5 and Article 15.4)

Level of Government:Central

Measures: Regulatory Law of Constitutional Article 5th relating to the Practice of Professions in Mexico City (Ley Reglamentaria del Artículo 5º Constitucional, relativo al Ejercicio de las Profesiones en la Ciudad de México), Chapter III, Section III, and Chapter V.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Description: Investment and Cross-Border Trade in Services

A favorable resolution from the CNIE is required for an investor of another Party or its investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico to supply legal services.

In the absence of an international agreement on the matter, the professional practice by a foreigner will be subject to reciprocity in the place of residence of the applicant and to compliance with the rest of the requirements established in Mexican laws and regulations.

Except as provided for in this entry, only a lawyer licensed in Mexico may have an ownership interest in a law firm established in the territory of Mexico.

A lawyer licensed to practice in another Party will be permitted to form a partnership with lawyers licensed in Mexico.

The number of lawyers licensed to practice in another Party serving as partners in a firm in Mexico may not exceed the number of lawyers licensed in Mexico serving as partners of that firm. Lawyers licensed to practice in another Party may practice and provide legal consultations on Mexican law, whenever they comply with the requirements to practice as a lawyer in Mexico.

A law firm established by a partnership of lawyers licensed to practice in another Party and lawyers licensed to practice in Mexico may hire lawyers licensed in Mexico as employees.

For greater certainty, this entry does not apply to the supply, on a temporary fly-in, fly-out basis or through the use of web based or telecommunications technology, of legal advisory services in foreign law and international law and, in relation to foreign and international law only, legal arbitration and conciliation or mediation services by foreign lawyers.

Sector: Professional, Technical and Specialized Services

Sub-Sector: Professional services

Industry Classification: CMAP 9510 Provision of Professional, Technical and Specialized Services (limited to professional services)

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4)

Level of Government:Central

Measures: Regulatory Law of Constitutional Article 5th relating to the Practice of Professions in Mexico City (Ley reglamentaria del Artículo 5º Constitucional, relativo al Ejercicio de las Profesiones en la Ciudad de México), Chapter III, Section III, and Chapter V.

Regulations to the Regulatory Law of Constitutional Article 5th relating to the Practice of Professions in Mexico City (Reglamento de la Ley Reglamentaria del Artículo 5ºConstitucional, relativo al Ejercicio de las Profesiones en la Ciudad de México), Chapter III.

Population General Law (Ley General de Población), Chapter III.

Description:Cross-Border Trade in Services

Pursuant to the relevant international treaties of which Mexico is a party, a foreigner may practice in Mexico City the professions set forth in the Regulatory Law of Constitutional Article 5th relating to the Practice of Professions in Mexico City.

In the absence of an international treaty on the matter, the professional practice by foreigners will be subject to reciprocity in the place of residence of the applicant and to compliance with the rest of the requirements established in Mexican laws and regulations.

Sector:Religious Services

Sub-Sector:

Industry Classification: CMAP 929001 Services of Religious Organizations

Obligations Concerned: Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Level of Government: Central

Measures: Religious Associations and Public Worship Law (Ley de Asociaciones Religiosas y Culto Público), Title II, Chapters I and II.

Description: Investment and Cross-Border Trade in Services

Representatives of a religious association in Mexico must be Mexican nationals.

A religious association must be an association constituted in accordance with the Religious Associations and Public Worship Law (Ley de Asociaciones Religiosas y Culto Público).

A religious association must register with the Ministry of Internal Affairs (Secretaría de Gobernación). To be registered, the religious association must be established in Mexico.

Sector: Agriculture Services

Sub-Sector:

Industry Classification: CMAP 971010 Provision of Agricultural Services

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

Plant Health Federal Law (Ley Federal de Sanidad Vegetal), Title II, Chapter IV.

Regulations to the Phytosanitary Law of the United Mexican States (Reglamento de la Ley de Sanidad Fitopecuaria de los Estados Unidos Mexicanos), Chapter VII.

Description: Cross-Border Trade in Services

A concession granted by the Ministry of Agriculture, Livestock, Rural Development, Fishing, and Food (Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, SAGARPA) is required to spray pesticides.

Only a Mexican national or a Mexican enterprise may obtain such a concession.

Sector: Transportation

Sub-Sector: Air transportation

Industry Classification: CMAP 384205 Manufacture, Assembly and Repair of Aircraft (limited to repair of aircrafts)

Obligations Concerned: Local Presence (Article 15.6)

Level of Government: Central

Measures: Civil Aviation Law (Ley de Aviación Civil), Chapter III, Section II.

Civil Aviation Regulations (Reglamento de la Ley de Aviación Civil), Chapter VII.

Description: Cross-Border Trade in Services

A permit issued by the SCT is required to establish and operate, or operate and exploit, an aircraft repair facility and centers

for teaching and training of personnel.

To obtain that permission the interested party must prove that the aircraft repair facilities and centers for teaching and training of personnel have their domicile in Mexico.

Sector: Transportation

Sub-Sector: Air transportation

Industry Classification: CMAP 973302 Airport and Heliport Management Services

Obligations Concerned: National Treatment (Article 14.4) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Civil Aviation Law (Ley de Aviación Civil), Chapters I and IV.

Airports Law (Ley de Aeropuertos), Chapter III

Regulations to the Airports Law (Reglamento de la Ley de Aeropuertos), Title II, Chapters I, II and III.

Description: Investment and Cross-Border Trade in Services

A concession granted by the SCT is required to construct and operate, or operate, airports and heliports. Only a Mexican enterprise may obtain such a concession.

A favorable resolution from the CNIE is required for an investor of another Party or its investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that is a concessionaire or permissionaire of airfields for public service.

When deciding, the CNIE will consider that the national and technological development be favored, and that the sovereign integrity of the Nation be protected.

Sector: Transportation

Sub-Sector: Air transportation

Industry Classification: CMAP 713001 Scheduled Air Transport Services on Domestically Registered Aircraft

CMAP 713002 Non-Scheduled Air Transport (Air Taxis)

Specialty air services

Obligations Concerned: National Treatment (Article 14.4) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Measures: Civil Aviation Law (Ley de Aviación Civil), Chapters IX and X Regulations to the Civil Aviation Law (Reglamento de la Ley de Aviación Civil), Title II, Chapter I.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

As qualified by the Description element.

Description: Investment

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of the voting interests in an enterprise established or to be established in the territory of Mexico that supplies a scheduled and non-scheduled domestic air transport service, a non-scheduled international air transport service in the modality of air taxi, or a specialty air service. The chairman and at least two-thirds of the boards of directors and two-thirds of the managing officers of such an enterprise must be Mexican nationals.

Only a Mexican national or a Mexican enterprise in which 51 percent of the voting interest is owned or controlled by Mexican nationals and of which the chairman and at least two-thirds of the managing officers are Mexican nationals, may register an aircraft in Mexico.

Sector: Transportation

Sub-Sector: Specialty air services

Industry Classification:

Obligations Concerned: Local Presence (Article 15.6)

Level of Government: Central

Measures: General Means of Communications Law (Ley de Vías Generales de Comunicación), Book I, Chapter III.

Civil Aviation Law (Ley de Aviación Civil), Chapters I, II, IV and IX.

As qualified by the Description element

Description: Cross Border Trade in Services

A permit issued by the SCT is required to provide all specialty air services in the territory of Mexico. Such a permit may only be granted when the person interested in the supply of these services has a domicile in the territory of Mexico.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 973203 Maritime Port Administration, Lake and Rivers

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Ports Law (Ley de Puertos), Chapters IV and V

Regulations to the Ports Law (Reglamento de la Ley de Puertos) Title I, Chapters I and VI

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III

Description: Investment

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of the ownership interest of a Mexican enterprise authorized to act as an integral port administrator.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 384201 Manufacture and Repair of Vessels

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III.

Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter II.

Ports Law (Ley de Puertos), Chapter IV.

Description: Cross-Border Trade in Services

A concession granted by the SCT is required to establish and operate, or operate, a shipyard. Only a Mexican national or a Mexican enterprise may obtain such a concession.

Sector:Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 973201 Water Transport Loading and Unloading Services (includes operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling; operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharves; waterfront terminal operations)

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter II, and Title II, Chapters IV and V.

Ports Law (Ley de Puertos), Chapters II, IV and VI.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III.

Regulations to the Use and Enjoyment of the Territorial Sea, Water Ways, Beaches, Relevant Federal Coastal Zone and Lands Gained to the Sea (Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar), Chapter II, Section II.

As qualified by the Description element.

Description: Investment and Cross-Border Trade in Services

A favorable resolution from the CNIE is required for an investor of another Party or its investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise, established or to be established in the territory of Mexico supplying port services to vessels for inland navigation such as towing, mooring, and tendering.

A concession granted by the SCT is required to build and operate, or operate, maritime and inland port terminals, including docks, cranes, and related facilities. Only a Mexican national and a Mexican enterprise may obtain such a concession.

A permit issued by the SCT is required to supply stevedoring and warehousing services. Only a Mexican national or a Mexican enterprise may obtain such a permit.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 973203 Maritime and Inland (Lake and Rivers Ports Administration)

Obligations Concerned: National Treatment (Article 14.4)

Level of Government:Central

Measures: Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title III, Chapter III.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Ports Law (Ley de Puertos), Chapters IV and VI.

Description: Investment

An investor of another Party or its investments may only participate, directly or indirectly, up to 49 percent in Mexican enterprises engaged in the supply of piloting port services to vessels operating in inland navigation.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 712011 International Maritime Transportation Services

CMAP 712012 Cabotage Maritime Services

CMAP 712013 International and Cabotage Towing Services

CMAP 712021 River and Lake Transportation Services

CMAP 712022 Internal Port Water Transportation Services

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Most-Favored-Nation Treatment (Article 14.5 and Article 15.4)

Level of Government: Central

Measures: Navigation and Maritime Commerce Law (Ley de Navegación y Comercio Marítimos), Title III, Chapter I.

Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Economic Competition Federal Law (Ley Federal de Competencia Económica), Chapter IV.

As qualified by the Description element.

Description: Investment and Cross-Border Trade in Services

The operation or exploitation of high-seas navigation vessels, including transport and international towing services, is open to ship-owners and vessels of all countries, on the basis of reciprocity according to international treaties. With the prior opinion of the Federal Competition Commission (Comisión Federal de Competencia Económica, COFECE), SCT may reserve, totally or partially, certain international high-seas freight transportation services, which could only be carried out by Mexican shipping enterprises with Mexican-flagged vessels or vessels reputed as such when the principles of free competition are not respected or the national economy is affected. For greater certainty the previous sentence does not apply to Canada.

The operation and exploitation of cabotage and inland navigation is reserved for Mexican ship-owners with Mexican vessels. When Mexican vessels are not appropriate and available with the same technical conditions, or it is required by the public interest, the SCT may provide temporary navigation permits to operate and exploit to Mexican ship-owners with a foreign vessel in accordance with the following priorities:

(a) Mexican ship-owner with a foreign vessel under a bareboat charter party; and

(b) Mexican ship-owner with a foreign vessel under any type of charter party.

The operation and exploitation in inland navigation and cabotage of tourist cruises as well as dredges and maritime devices for the construction, preservation, and operation of ports may be carried out by Mexican or foreign shipping enterprises using Mexican or foreign vessels or maritime devices, on the basis of reciprocity with a Party, endeavoring to give priority to Mexican enterprises and complying with applicable laws.

With the prior opinion of the COFECE, the SCT may resolve that totally or partially, certain cabotage or high-seas navigation could only be carried by Mexican shipping enterprises with Mexican vessels or reputed as such in the absence of conditions of effective competition on the relevant market as per the terms of the Economic Competition Federal Law.

An investor of another Party or its investments may only own, directly or indirectly, up to 49 percent of the ownership interest in a Mexican shipping enterprise or Mexican vessels, established or to be established in the territory of Mexico, which is engaged in the commercial exploitation of vessels for inland and cabotage navigation, excluding tourism cruises and exploitation of dredges and maritime devices for the construction, preservation, and operation of ports.

A favorable resolution from the CNIE is required for an investor of another Party or its investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in high-seas navigation services and port towing services.

Sector: Transportation

Sub-Sector: Non-energy pipelines

Industry Classification:

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III.

National Waters Law (Ley de Aguas Nacionales), Title I, Chapter II, and Title IV, Chapter II.

Description: Cross-Border Trade in Services

A concession granted by the SCT is required to construct and operate, or operate, pipelines carrying goods other than energy or basic petrochemicals.

Only a Mexican national or a Mexican enterprise may obtain such a concession.

Sector: Transportation Sub-Sector: Railway transportation services

Industry Classification: CMAP 711101 Railway Transport Services

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3)

Local Presence (Article 15.6)

Level of Government:Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III.

Regulatory Law of the Railway Service (Ley Reglamentaria del Servicio Ferroviario) Chapters I and II, Section III.

Regulations to the Railway Service (Reglamento del Servicio Ferroviario), Title I, Chapters I, II and III, Title II, Chapters I and IV, and Title III, Chapter I, Sections I and II.

Description: Investment and Cross-Border Trade in Services

A favorable resolution from the CNIE is required for an investor of another Party or its investments to participate, directly or indirectly, in more than 49 percent of the ownership interest of an enterprise established or to be established in the territory of Mexico engaged in the construction, operation, and exploitation of railroads deemed general means of communication, or in the supply of railway transportation public service.

When deciding, the CNIE will consider that the national and technological development be favored, and that the sovereign integrity of the Nation be protected.

A concession granted by the SCT is required to build, operate and exploit railway transportation services and to provide railway transportation public service. Only a Mexican enterprise may obtain such a concession.

A permit issued by the SCT is required to provide auxiliary services; the construction of entry and exit facilities, crossings, and marginal facilities in the right of way; the installation of advertisements and publicity signs in the right of way; and the construction and operation of bridges over railway lines. Only a Mexican national or a Mexican enterprise may obtain such a permit.

Sector: Transportation

Sub-Sector:Land transportation

Industry Classification: CMAP 973101 Management Services of Passenger Bus Terminals and Auxiliary Services (limited to main bus and truck terminals and bus and truck stations)

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4) Local Presence (Article 15.6)

Level of Government: Central

Measures: Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III.

Regulations to the Enjoyment of the Right of Way of the Federal Roads and Surrounding Zones (Reglamento para el Aprovechamiento del Derecho de Vía de las Carreteras Federales y Zonas Aledañas), Chapters II and IV.

Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapter I.

Description: Cross-Border Trade in Services

A permit issued by the SCT is required to establish, or operate, a bus or truck station or terminal. Only a Mexican national or a Mexican enterprise may obtain such a permit.

To obtain such permit the interested party must prove that it has its domicile in Mexico.

Sector: Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 973102 Management Services of Roads, Bridges and Auxiliary Services

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32.

Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III.

Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapters I and V.

Description: Cross-Border Trade in Services

A permit granted by the SCT is required to provide auxiliary services to federal road transportation. Only a Mexican national or a Mexican enterprise may obtain such a permit.

For greater certainty, auxiliary services are not part of federal road transportation of passengers, tourism, or cargo, but they complement their operation and exploitation.

Sector: Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 711201 Construction Materials Transport Services

CMAP 711202 Moving Services

CMAP 711203 Other Specialized Freight Transport Services

CMAP 711204 General Freight Transport Services

CMAP 711311 Long-Distance Passenger Bus and Coach Transport Services

CMAP 711318 School and Tourist Transport Services (limited to tourist transport services)

CMAP 720002 Courier services

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II.

Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter I and III.

Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapter I.

As qualified by the Description element.

Description: Investment and Cross-Border Trade in Services

An investor of another Party or its investments may not own, directly or indirectly, an ownership interest in an enterprise established or to be established in the territory of Mexico, engaged in transportation services of domestic cargo between points in the territory of Mexico, except for parcel and courier services.

A permit issued by the SCT is required to supply a road transportation service of cargo, passengers, or tourism.

An investor of another Party or its investments may own up to 100 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico to supply an inter-city bus service, a tourist transportation service or a road transportation service of international cargo between points in the territory of Mexico.

Only a Mexican national or a Mexican enterprise with a foreigners' exclusion clause, using Mexican registered equipment that is Mexican-built or legally imported, and drivers who are Mexican nationals, may supply a road transportation service of domestic cargo services between points in the territory of Mexico.

A permit issued by the SCT is required to supply parcel and courier services. Only a Mexican national and a Mexican enterprise may supply such services.

Sector: Transportation

Sub-Sector:Railway transportation services

Industry Classification: CMAP 711101 Transport Services Via Railway (limited to railway crew)

Obligations Concerned: National Treatment (Article 15.3)

Level of Government: Central

Measures: Federal Labor Law (Ley Federal del Trabajo), Title VI, Chapter V.

Description: Cross-Border Trade in Services

Railway crew members must be Mexican nationals.

Sector:Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 711312 Urban and Suburban Passenger Bus and Coach Transport Services

CMAP 711315 Motor Vehicle Taxi Transport Services

CMAP 711316 Motor Vehicle Fixed Route Transport Services

CMAP 711317 Transport Services in Motor Vehicles from Taxi-Ranks

CMAP 711318 School and Tourist Transport Services (limited to school transport services)

Obligations Concerned: National Treatment (Article 14.4 and Article15.3)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II.

General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I and II.

Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III.

Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapter I.

Description: Investment and Cross-Border Trade in Services

Only a Mexican national or a Mexican enterprise with a foreigners' exclusion clause may supply local urban and suburban passenger bus services, school bus services, and taxi and other collective transportation services.

Sector: Communications

Sub-Sector: Entertainment services (Cinema)

Industry Classification: CMAP 941103 Private Exhibition of Films

Obligations Concerned: Most-Favored-Nation Treatment (Article 14.5 and Article 15.4) National Treatment (Article 15.3)

Level of Government: Central

Measures: Federal Cinematography Law (Ley Federal de Cinematografía), Chapter III.

Regulations to the Federal Cinematography Law (Reglamento de la Ley Federal de Cinematografía), Chapter V.

Description: Investment and Cross-Border Trade in Services

Exhibitors shall reserve 10 percent of the total screen time to the projection of national films.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Most-Favored-Nation Treatment (Article 14.5 and Article 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United Mexican States.

Description: Investment and Cross-Border Trade in Services

ANNEX I. SCHEDULE OF THE UNITED STATES

INTRODUCTORY NOTE

1. Description provides a general, nonbinding description of the measure for which the entry is made.

2. In accordance with Articles 14.12 (Non-Conforming Measures) and 15.7 (Non- Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

Sector: Atomic Energy

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures:Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.

Description: Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear “utilization or production facilities” for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear “utilization and production facilities”, for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

Sector: Business Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government:Central

Measures: Export Trading Company Act of 1982, 15 U.S.C. §§ 4011-4021Export Trade Certificates of Review, 15 C.F.R. Part 325

Description: Cross-Border Trade in Services

Title III of the Export Trading Company Act of 1982 authorizes the Secretary of Commerce to issue “certificates of review” with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a “person” as defined by the Act can apply for a certificate of review. “Person” means “an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons”.

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a “member” of a qualified applicant. The regulations define “member” to mean “an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement”.

Sector: Business Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Export Administration Act of 1979, as amended, 50 U.S.C. App. §§ 2401-2420International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706Export Administration Regulations, 15 C.F.R. Parts 730-774Export Control Reform Act of 2018, Pub. L. 115-232, Title 17, subtitle B, 132 Stat. 2208 (2018)

Description: Cross-Border Trade in Services

Certain exports and re-exports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States.

In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

Sector: Mining

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4) Most-Favored-Nation Treatment (Article 14.5)

Level of Government: Central

Measures: Mineral Lands Leasing Act of 1920, 30 U.S.C. Chapter 3A10 U.S.C. § 7435

Description: Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor’s home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it

accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).

Nationalization is not considered to be denial of similar or like privileges.

Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4) Most-Favored-Nation Treatment (Article 14.5)

Level of Government: Central

Measures:22 U.S.C. §§ 2194 and 2198(c)

Description: Investment

Overseas Private Investment Corporation (OPIC) programs are not available to non-U.S. citizens as individuals. The availability of these programs to foreign enterprises and foreign owned or controlled domestic enterprises depends upon the extent of U.S. ownership or other U.S. participation, as well as the form of business organization.

OPIC insurance and loan guaranties are available only to eligible investors, which are: (i) United States citizens; (ii) corporations, partnerships, or other associations, including non-profit associations, created under the laws of the United States, any state or territory thereof, or the District of Columbia, and substantially beneficially owned by United States citizens; and (iii) foreign partnerships or associations 100 percent owned, or foreign corporations at least 95 percent owned, by one or more such United States citizens, corporations, partnerships, or associations.

OPIC may issue insurance to investors not otherwise eligible in connection with arrangements with foreign governments (including agencies, instrumentalities, or political subdivisions thereof) or with multilateral organizations and institutions, such as the Multilateral Investment Guarantee Agency, for sharing liabilities assumed under such investment insurance, except that the maximum share of liabilities so assumed may not exceed the proportionate participation by eligible investors in the project.

Sector: Air Transportation

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4) Most-Favored-Nation Treatment (Article 14.5) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VII, Aviation Programs14 C.F.R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)

Description: Investment

Only air carriers that are “citizens of the United States” may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.

U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Air Transportation

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Measures: 49 U.S.C., Subtitle VII, Aviation Programs49 U.S.C. § 4170314 C.F.R. Part 375

Description: Investment

"Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality accords U.S. civil aircraft operators effective reciprocity. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Cross-Border Trade in Services

Authorization from the Department of Transportation is required for the supply of specialty air services in the territory of the United States. A person of a Party will be able to obtain such an authorization if the Party provides effective reciprocity by virtue of this Agreement.

Sector: Land Transportation

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Article 14.5 and 15.4)Local Presence (Article 15.6)

Level of Government: Central

Measures: 49 U.S.C. § 13902(c)49 U.S.C. § 1310249 U.S.C. § 1350149 C.F.R. Subtitle B, Chapter IIISec. 350, P.L. 107-87, as amendedSec. 6901, P.L. 110-28, as amended

Description: Investment

Grants of authority for the provision of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo are subject to reciprocity.

Investment and Cross-Border Trade in Services

Only persons of the United States, using U.S.-registered and either U.S.-built or duty-paid trucks or buses, may provide truck or bus services between points in the territory of the United States.

Operating authority from the Department of Transportation is required to provide cross-border bus or truck services in the territory of the United States. For greater certainty, the United States may maintain the regulatory requirements in 49 C.F.R. Subtitle B, Chapter III, or similar successor regulatory requirements.

Sector: Transportation Services - Customs Brokers

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures:19 U.S.C. § 1641(b)

Description: Investment and Cross-Border Trade in Services

A customs broker's license is required to conduct customs business on behalf of another person. An individual may obtain such a license only if that individual is a U.S. citizen. A corporation, association, or partnership may receive a customs

broker's license only if it is established under the laws of any state and at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4)Most-Favored-Nation Treatment (Article 14.5)

Level of Government: Central

Measures: Securities Act of 1933, 15 U.S.C. §§ 77c(b), 77f, 77g, 77h, 77j, and 77s(a)17 C.F.R. §§ 230.251 and 230.405Securities Exchange Act of 1934, 15 U.S.C. §§ 78l, 78m, 78o(d), and 78w(a)17 C.F.R. § 240.12b-2

Description: Investment

Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications*

Sub-Sector:

Obligations Concerned:National Treatment (Article 14.4)

Level of Government:Central

Measures: 47 U.S.C. § 310 (a)-(b)Foreign Participation Order 12 FCC Rcd 23891, paras. 97-118 (1997)

Description: Investment

The United States restricts ownership of radio licenses in accordance with the above statutory and regulatory provisions, which provide that, inter alia:

(a) no station license may be granted to or held by a foreign government or representative thereof;

(b) no broadcast or common carrier or aeronautical en route or aeronautical fixed station license may be granted to or held by:

(i) an alien or its representative;

(ii) a corporation organized under the laws of a foreign government; or

(iii) a corporation of which more than one fifth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organized under the laws of a foreign country; and

(c) absent a specific finding that that the public interest would be served by permitting foreign ownership of a broadcast license, no broadcast station license shall be granted to any corporation directly or indirectly controlled by another corporation of which more than one fourth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organized under the laws of a foreign country.

*Radiocommunications consist of all communications by radio, including broadcasting.

Sector: Professional Services - Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office

Sub-Sector:

Obligations Concerned: National Treatment (Article 15.3)Most-Favored-Nation Treatment (Article 15.4)Local Presence (Article 15.6)

Level of Government:Central

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office) 37 C.F.R. Part 11 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Trade in Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):

(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 11.6(a));

(b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. §11.6(c)); and

(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 11.14(a)-(c)).

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico

Description: Investment and Cross-Border Trade in Services

ANNEX I. SCHEDULE OF CANADA

INTRODUCTORY NOTES

1. Description provides a general non-binding description of the measure for which the entry is made.

2. Obligations Concerned specifies the obligations referred to in Article 14.12 (Non- Conforming Measures) and Article 15.7 (Non-Conforming Measures) that do not apply to the listed measures.

3. In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is taken. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified prevails over all other elements; and

(b) the Measures element is not so qualified, the Measures element prevails over other elements, unless a discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element prevails, in which case the other elements prevail to the extent of that discrepancy.

Reservation I-C-1

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Measures: Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

Description: Investment

1. Except as set out in paragraphs 5 and 9, the Director of Investments will review a direct "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by a WTO investor if the value of the Canadian business is not less than C$1 billion, adjusted in accordance with the applicable methodology in January of each subsequent year, starting in 2019, as set out in the Investment Canada Act.

2. Notwithstanding the definition of "investor of a Party" in Article 14.1 (Definitions), only WTO investors or entities controlled by WTO investors provided for in the Investment Canada Act may benefit from the CAD $1 billion threshold.

3. Except as set out in paragraphs 5 and 9, the Director of Investments will review a direct "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by a trade agreement investor if the value of the Canadian business is not less than CAD $1.5 billion, adjusted in accordance with the applicable methodology in January of each subsequent year, starting in 2019, as set out in the Investment Canada Act.

4. Notwithstanding the definition of "investor of a Party" in Article 14.1 (Definitions), only a trade agreement investor or an entity controlled by a trade agreement investor as provided for in the Investment Canada Act may benefit from the CAD $1.5 billion review threshold.

5. The higher threshold in paragraphs 1 and 3 does not apply to a direct acquisition of control by a state-owned enterprise of a Canadian business. These acquisitions are subject to review by the Director of Investments if the value of the Canadian business is not less than C$398 million in 2018, adjusted in accordance with the applicable methodology in January of each subsequent year as set out in the Investment Canada Act.

6. An investment subject to review under the Investment Canada Act may not be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada. This determination is made in accordance with six factors described in the Investment Canada Act, summarized as follows:

(a) the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the use of parts, components, and services produced in Canada and on exports from Canada;

(b) the degree and significance of participation by Canadians in the investment;

(c) the effect of the investment on productivity, industrial efficiency, technological development, and product innovation in Canada;

(d) the effect of the investment on competition within an industry in Canada;

(e) the compatibility of the investment with national industrial, economic, and cultural policies, taking into consideration industrial, economic, and cultural policy objectives enunciated by the government or legislature of a province likely to be significantly affected by the investment; and

(f) the contribution of the investment to Canada's ability to compete in world markets.

7. In making a net benefit determination, the Minister, through the Director of Investments, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit an undertaking to the Minister in connection with a proposed acquisition that is the subject of review. In the event of noncompliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorized under the Investment Canada Act.

8. A non-Canadian who establishes or acquires a Canadian business, other than those that are subject to review must notify the Director of Investments.

9. The review thresholds set out in paragraphs 1, 3, and 5 do not apply to an acquisition of a cultural business.

10. In addition, the specific acquisition or establishment of a new business in designated types of business activities relating to Canada's cultural heritage or national identity, which are normally notifiable, may be subject to review if the Governor in Council authorises a review in the public interest.

11. An indirect "acquisition of control" of a Canadian business by an investor of a Party other than a cultural business is not reviewable.

12. Notwithstanding Article 14.10 (Performance Requirements), Canada may impose requirements or enforce a commitment or undertaking in connection with the establishment, acquisition, expansion, conduct, operation or management of an investment of an investor of a Party or of a non-Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada in connection with the review of an acquisition of an investment under the Investment Canada Act.

13. Except for requirements, commitments or undertakings relating to technology transfer as set out in paragraph 12 of this entry, Article 14.10 (Performance Requirements) applies to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act.

14. For the purposes of this entry:

(a) a non-Canadian means an individual, government or agency thereof or an entity that is not Canadian; and

(b) Canadian means a Canadian citizen or permanent resident, a government in Canada or agency thereof, or a Canadian-controlled entity as described in the Investment Canada Act.

Reservation I-C-2

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Measures: As set out in the Description element

Description: Investment

1. Canada or a province or territory, when selling or disposing of its equity interests in, or the assets of, an existing government enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of these interests or assets and on the ability of owners of these interests or assets to control a resulting enterprise by investors of a Party or of a third country or their investments. With respect to a sale or other disposition, Canada or a province or territory may adopt or maintain a measure relating to the nationality of senior management or members of the board of directors.

2. For the purposes of this entry:

(a) a measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes a limitation on the ownership of equity interests or assets or imposes a nationality requirement described in this entry is an existing measure; and

(b) government enterprise means an enterprise owned or controlled through ownership interests by Canada or a province or territory, and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Reservation I-C-3

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Regulations, 2001, SOR/2001-512

Canada Cooperatives Act, S.C. 1998, c. 1

Canada Cooperatives Regulations, SOR/99-256

Description: Investment

1. A corporation may place constraints on the issue, transfer and ownership of shares in a federally incorporated corporation. The object of those constraints is to permit a corporation to meet Canadian ownership or control requirements, under certain laws set out in the Canada Business Corporations Regulations, 2001, in sectors where Canadian ownership or control is required as a condition to receive licences, permits, grants, payments or other benefits. In order to maintain certain Canadian ownership levels, a corporation is permitted to sell shareholders' shares without the consent of those shareholders, and to purchase its own shares on the open market.

2. The Canada Cooperatives Act provides that constraints may be placed on the issue or transfer of investment shares of a cooperative to persons not resident in Canada, to permit cooperatives to meet Canadian ownership requirements to obtain a licence to carry on a business, to become a publisher of a Canadian newspaper or periodical or to acquire investment shares of a financial intermediary and in sectors where ownership or control is a required condition to receive licences, permits, grants, payments, and other benefits. Where the ownership or control of investment shares would adversely affect the ability of a cooperative to maintain a level of Canadian ownership or control, the Canada Cooperatives Act provides for the limitation of the number of investment shares that may be owned or for the prohibition of the ownership of investment shares.

3. For the purposes of this entry Canadian means “Canadian” as defined in the Canada Business Corporations Regulations, 2001 or in the Canada Cooperatives Regulations.

Reservation I-C-4

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Citizenship Act, R.S.C. 1985, c. C-29

Foreign Ownership of Land Regulations, SOR/79-416

Description: Investment

1. The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Agricultural and Recreational Land Ownership Act, R.S.A. 1980, c. A-9. In Alberta, an ineligible person or foreign owned or controlled corporation may only hold an interest in controlled land consisting of a maximum of two parcels containing, in the aggregate, a maximum of 20 acres.

2. For the purposes of this entry:

ineligible person means:

(a) a natural person who is not a Canadian citizen or permanent resident;

(b) a foreign government or agency thereof; or

(c) a corporation incorporated in a country other than Canada; and

controlled land means land in Alberta but does not include:

(a) land of the Crown in right of Alberta;

(b) land within a city, town, new town, village or summer village; and

(c) mines or minerals.

Reservation I-C-5

Sector: All Sectors

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Canadian Arsenals Limited Divestiture Authorization Act, S.C. 1986, c. 20

Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

Description: Investment

1. A “non-resident” or “non-residents” may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For some companies the restrictions apply to individual shareholders, while for others the restrictions may apply in the aggregate. If there are limits on the percentage that an individual Canadian investor can own, these limits also apply to non-residents. The restrictions are as follows:

Cameco Limited (formerly Eldorado Nuclear Limited): 15 percent per non-resident natural person, 25 percent in the aggregate;

Nordion International Inc.: 25 percent in the aggregate;

Theratronics International Limited: 49 percent in the aggregate; and

Canadian Arsenals Limited: 25 percent in the aggregate.

2. For the purposes of this entry, non-resident includes:

(a) a natural person who is not a Canadian citizen and not ordinarily resident in Canada;

(b) a corporation incorporated, formed or otherwise organized outside Canada;

(c) the government of a foreign State or a political subdivision of a government of a foreign State, or a person empowered to perform a function or duty on behalf of that government;

(d) a corporation that is controlled directly or indirectly by a person or an entity referred to in subparagraphs (a) through (c);

(e) a trust:

(i) established by a person or an entity referred to in subparagraphs (b) through (d), other than a trust for the administration of a pension fund for the benefit of natural persons the majority of whom are resident in Canada, or

(ii) in which a person or an entity referred to in subparagraphs (a) through (d) has more than 50 percent of the beneficial interest, and

(f) a corporation that is controlled directly or indirectly by a trust referred to in subparagraph (e).

Reservation I-C-6

Sector: All Sectors

Sub-Sector:

Obligations Concerned: Local Presence (Article 15.6)

Level of Government: Central

Measure: Export and Import Permits Act, R.S.C. 1985, c. E-19

Description: Cross-Border Trade in Services

Only a natural person ordinarily resident in Canada, an enterprise with its head office in Canada or a branch office in Canada of a foreign enterprise may apply for and be issued an import or export permit or transit authorization certificate for a good or related service subject to controls under the Export and Import Permits Act.

Reservation I-C-7

Sector: Communications services

Sub-sector: Telecommunications Transport Networks and Services Radiocommunications

Obligations Concerned: National Treatment (Article 14.4) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Measures: Telecommunications Act, S.C. 1993, c. 38

Canadian Telecommunications Common Carrier Ownership and Control Regulations, SOR/94-667

Radiocommunication Act, R.S.C. 1985, c. R-2

Radiocommunication Regulations, SOR/96-484

Description: Investment

1. Foreign investment in a facilities-based telecommunications service supplier is restricted to a maximum, cumulative total of 46.7 percent voting interest, based on 20 percent direct investment and 33.3 percent indirect investment.

2. A facilities-based telecommunications service supplier must be controlled in fact by Canadians.

3. At least 80 percent of the members of the board of directors of a facilities-based telecommunications service suppliers must be Canadians.

4. Notwithstanding the restrictions described above:

(a) foreign investment is allowed up to 100 percent for suppliers conducting operations under an international submarine cable licence;

(b) mobile satellite systems of a foreign service supplier may be used by a Canadian service supplier to supply services in Canada;

(c) fixed satellite systems of a foreign service supplier may be used to provide services between points in Canada and all points outside Canada;

(d) foreign investment is allowed up to 100 percent for a supplier conducting operations under a satellite authorization; and

(e) foreign investment is allowed up to 100 percent for a facilities-based telecommunications service supplier that has revenues, including those of its affiliates, from the supply of a telecommunications service in Canada representing less than 10 percent of the total telecommunications services' annual revenues in Canada. A facilities-based telecommunications service supplier that previously had annual revenues, including those of its affiliates, from the supply of a telecommunication service in Canada representing less than 10 percent of the total telecommunications services annual revenues in Canada may increase to 10 percent or beyond as long as the increase in revenues did not result from the acquisition of control of, or the acquisition of assets used to supply telecommunications services by, another facilities-based telecommunications service supplier that is subject to the legislative authority of the Parliament of Canada.

Reservation I-C-8

Sector: Business Services Industries

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Level of Government: Central

Measures: Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs Brokers Licensing Regulations, SOR/86-1067

Description: Investment and Cross-Border Trade in Services

To be a licensed customs broker in Canada, in addition to meeting all other licensing requirements:

(a) a natural person must be a Canadian national;

(b) a corporation must be incorporated in Canada with a majority of its directors being Canadian nationals; and

(c) a partnership must be composed of persons who are Canadian nationals who meet all other licensing requirements, or corporations incorporated in Canada with a majority of their directors being Canadian nationals who meet all other licensing requirements.

Reservation I-C-9

Sector: Business Services Industries

Sub-Sector: Duty Free Shops

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Duty Free Shop Regulations, SOR/86-1072

Description: Investment and Cross-Border Trade in Services

1. In addition to all other licensing requirements, to be a licensed duty free shop operator at a border crossing in Canada, a natural person must be a Canadian national.

2. In addition to all other licensing requirements, to be a licensed duty free shop operator at a border crossing in Canada, a corporation must be incorporated in Canada and have all of its shares beneficially owned by Canadian nationals who meet all other licensing requirements.

Reservation I-C-10

Sector: Business Services Industries

Sub-Sector: Examination Services relating to the Export and Import of Cultural Property

Obligations Concerned: National Treatment (Articles 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measure: Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

Description: Cross-Border Trade in Services

1. Only a resident of Canada or an institution in Canada may be designated as an expert examiner of cultural property for the purposes of the Cultural Property Export and Import Act.

2. For the purposes of this entry:

(a) institution means an entity that is publicly owned and operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them; and

(b) resident of Canada means a natural person who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains an establishment in Canada to which employees employed in connection with the business of the corporation ordinarily report for work

Reservation I-C-11

Sector: Professional Services

Sub-Sector: Patent Agents

Patent Agents supplying Legal Advisory and Representation Services.

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Patent Act, R.S.C. 1985, c. P-4

Patent Rules, SOR/96-423

Description: Cross-Border Trade in Services

To represent a person in the prosecution of a patent application or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

Reservation I-C-12

Sector: Professional Services

Sub-Sector: Trade-mark Agents

Trade-mark Agents supplying Legal Advisory and Representation

Services in Statutory Procedures

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Trade-marks Act, R.S.C. 1985, c. T-13

Trade-marks Regulations, SOR/96-195

Description: Cross-Border Trade in Services

To represent a person in the prosecution of an application for a trade-mark or in other business before the Office of the Registrar of Trade-Marks, a trade-mark agent must be resident in Canada and registered by the Office of the Registrar of Trade-Marks.

Reservation I-C-13

Sector: Energy

Sub-Sector: Oil and Gas

Obligations Concerned: National Treatment (Article 14.4)

Level of Government: Central

Measures: Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.) Territorial Lands Act, R.S.C. 1985, c. T-7

Federal Real Property and Federal Immovables Act, S.C. 1991, c. 50

Canada-Newfoundland and Labrador Atlantic Accord Implementation Act, S.C. 1987, c. 3

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Description: Investment

1. This reservation applies to a production licence issued for “frontier lands” and “offshore areas” (areas not under provincial jurisdiction) as defined in the applicable measures.

2. A person who holds an oil and gas production licence or shares therein must be a corporation incorporated in Canada.

Reservation I-C-14

Sector: Energy

Sub-Sector: Oil and Gas

Obligations Concerned: Performance Requirements (Article 14.10) Local Presence (Article 15.6)

Level of Government: Central

Measures: Canada Oil and Gas Operations Act, R.S.C. 1985, c. O-7

Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada - Newfoundland and Labrador Atlantic Accord Implementation Act, S.C. 1987, c. 3

Measures implementing the Canada-Yukon Oil and Gas Accord, including the Canada-Yukon Oil and Gas Accord Implementation Act, S.C. 1998, c.5, s. 20 and the Oil and Gas Act, RSY 2002, c. 162

Measures implementing the Northwest Territories Oil and Gas Accord, including implementing measures that apply to or are adopted by Nunavut as the successor territories to the former Northwest Territories

Measures implementing the Accord between the Government of Canada and the Government of Quebec for the joint management of petroleum resources in the Gulf of St. Lawrence or any other similar federal-provincial accords related to the joint management of petroleum resources.

Description: Investment and Cross-Border Trade in Services

1. Under the Canada Oil and Gas Operations Act, a "benefits plan" must be approved by the Minister in order to be authorized to proceed with an oil and gas development project.

2. A benefits plan means a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors, and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in proposed work or activity referred to in the benefits plan.

3. The benefits plan contemplated by the Canada Oil and Gas Operations Act permits the Minister to impose on the applicant an additional requirement to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in proposed work referred to in the benefits plan.

4. Provisions continuing those set out in the Canada Oil and Gas Operations Act are included in laws which implement the Canada-Yukon Oil and Gas Accord.

5. Provisions continuing those set out in the Canada Oil and Gas Operations Act will be included in laws or regulations to implement accords with various provinces and territories, including implementing legislation by provinces and territories (for example, the Northwest Territories Oil and Gas Accord, the Canada-Quebec Gulf of St. Lawrence Petroleum Resources Accord, and the New Brunswick Oil and Gas Accord). For the purposes of this reservation these accords and implementing legislation shall be deemed, once concluded, to be existing measures

6. The Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act have the same requirement for a benefits plan but also require that the benefits plan ensures that:

(a) the corporation or other body submitting the plan establishes in the applicable province an office where appropriate levels of decision-making are to take place, prior to carrying out work or an activity in the offshore area;

(b) expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and

(c) first consideration be given to goods produced or services provided from within the province, where those goods or services are competitive in terms of fair market price, quality, and delivery.

7. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in proposed work or activity referred to in the plan.

8. In addition, Canada may impose a requirement or enforce a commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts.

Reservation I-C-15

Sector: Energy

Sub-Sector: Oil and Gas

Obligations Concerned: Performance Requirements (Article 14.10)

Level of Government: Central

Measures: Hibernia Development Project Act, S.C. 1990, c. 41

Canada-Newfoundland and Labrador Atlantic Accord Implementation Act, S.C. 1987, c. 3

Description: Investment

1. Under the Hibernia Development Project Act, Canada and the Hibernia Project Owners may enter into agreements. Those agreements may require the Project Owners to undertake to perform certain work in Canada and Newfoundland and Labrador and to use their best efforts to achieve specific Canadian and Newfoundland and Labrador target levels in relation to the provisions of a "benefits plan" required under the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act. "Benefits plans" are further described in I-C-14.

2. In addition, Canada may impose in connection with the Hibernia Project a requirement or enforce a commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Reservation I-C-16

Sector: Energy

Sub-Sector: Uranium

Obligations Concerned: National Treatment (Article 14.4) Most-Favored-Nation Treatment (Article 14.5)

Level of Government: Central

Measures: Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

Policy on Non-Resident Ownership in the Uranium Mining Sector, 1987

Description: Investment

1. Ownership by "non-Canadians", as defined in the Investment Canada Act, of a uranium mining property is limited to 49 percent at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadian controlled", as defined in the Investment Canada Act.

2. Exemptions from the Non-Resident Ownership Policy in the Uranium Mining Sector are permitted, subject to approval of the Governor in Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by non-Canadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. No increase in non-Canadian ownership is permitted.

3. In considering a request for an exemption from the Policy from an investor of a Party, Canada will not require that it be demonstrated that a Canadian partner cannot be found.

Reservation I-C-17

Sector: Transportation

Sub-Sector: Air Transportation

Obligations Concerned: National Treatment (Article 14.4) Most-Favored-Nation Treatment (Article 14.5) Senior Management and Board of Directors (Article 14.11)

Level of Government: Central

Measures: Canada Transportation Act, S.C. 1996, c. 10

Aeronautics Act, R.S.C. 1985, c. A-2

Canadian Aviation Regulations, SOR/96-433 Part II, Subpart 2 -“Aircraft Markings & Registration”; Part IV “Personnel Licensing & Training”; and Part VII “Commercial Air Services”

Description: Investment

1. Only Canadians may provide the following commercial transportation air services:

(a) domestic services (air services between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country);

(b) scheduled international services (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future air services agreements;

(c) non-scheduled international services (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under the Canada Transportation Act; and

(d) specialty air services including, but are not limited to: aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing, and aerial crop spraying.

2. For the purposes of 1 (a), (b), and (c), the Canada Transportation Act, in section 55, defines "Canadian" in the following manner:

(a) a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act, S.C. 2001, c.27;

(b) a government in Canada or an agent or mandatary of that government; or

(c) a corporation or entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 51 percent of the voting interests are owned and controlled by Canadians and where:

(i) no more than 25 percent of the voting interests are owned directly or indirectly by any single non-Canadian, either individually or in affiliation with another person, and

(ii) no more than 25 percent of the voting interests are owned directly or indirectly by one or more non-Canadians authorized to provide an air service in any jurisdiction, either individually or in affiliation with another person;

3. Regulations made under the Aeronautics Act include distinct definitions of "Canadian" referenced in paragraphs (2) and (4). These Regulations require that a Canadian operator of commercial air services operate Canadian-registered aircraft. These Regulations require an operator to be Canadian in order to obtain a Canadian Air Operator Certificate and to qualify to register aircraft as "Canadian".

4. For the Purposes of 1 (d), the Canadian Aviation Regulations define "Canadian" in the following manner:

(a) a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act;

(b) a government in Canada or an agent or mandatary of that government; or

(c) a corporation or entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 75 percent of the voting interests are owned and controlled by Canadians.

5. No foreign individual is qualified to be the registered owner of a Canadian-registered aircraft.

6. Further to the Canadian Aviation Regulations, a corporation incorporated in Canada, but that does not meet the Canadian ownership and control requirements, may only register an aircraft for private use where a significant majority of use of the aircraft (at least 60 percent) is in Canada.

7. The Canadian Aviation Regulations also have the effect of limiting foreign-registered private aircraft registered to non-Canadian corporations to be present in Canada for a maximum of 90 days per twelve-month period. The foreign-registered private aircraft shall be limited to private use, as would be the case for Canadian-registered aircraft requiring a private operating certificate.

Reservation I-C-18

Sector: Air Transportation

Sub-Sector: Specialty Air Services as defined in Article 15.1 (Definitions)

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4)

Level of Government: Central

Measures: Canada Transportation Act, S.C. 1996, c. 10

Air Transportation Regulations, SOR/88-58

Canadian Aviation Regulations, SOR/96-433

Description: Cross-Border Trade in Services

Authorization from Transport Canada is required to supply a specialty air service in the territory of Canada. In determining whether to grant a particular authorization, Transport Canada will consider among other factors, whether the country in which the applicant, if an individual, is resident or, if an enterprise, is constituted or organized, provides Canadian specialty

air service operators reciprocal access to supply specialty air services in that country's territory. Any foreign service supplier authorized to supply a specialty air service is required to comply with Canadian safety requirements while supplying these services in Canada.

Reservation I-C-19

Sector: Transportation

Sub-Sector: Air Transportation

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4) Local Presence (Article 15.6)

Level of Government: Central

Measures: Aeronautics Act, R.S.C. 1985, c. A-2

Canadian Aviation Regulations, SOR/96-433, Part IV "Personnel Licensing & Training"; Part V "Airworthiness"; Part VI "General Operating & Flight Rules"; and Part VII "Commercial Air Services"

Description: Cross-Border Trade in Services

1. Aircraft and other aeronautical product repair, overhaul or maintenance activities required to maintain the airworthiness of Canadian-registered aircraft and other aeronautical products must be performed by a person meeting Canadian aviation regulatory requirements (that is, approved maintenance organizations and aircraft maintenance engineers). A certification is not provided for persons located outside Canada, except sub-organizations of approved maintenance organizations that themselves are located in Canada.

2. Pursuant to an airworthiness agreement between Canada and the United States, Canada recognizes the certification and oversight provided by the United States for all repair, overhaul and maintenance facilities and individuals performing the work located in the United States.

Reservation I-C-20

Sector: Transportation

Sub-Sector: Land Transportation

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Motor Vehicle Transport Act, R.S.C. 1985, c. 29 (3rd Supp.), as amended by S.C. 2001, c. 13.

Canada Transportation Act, S.C. 1996, c. 10

Customs Tariff, S.C. 1997, c. 36

Description: Cross-Border Trade in Services

Only a person of Canada using Canadian-registered and either Canadian-built or duty-paid trucks or buses, may provide truck or bus services between points in the territory of Canada.

Reservation I-C-21

Sector: Transportation

Sub-Sector: Water Transportation

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Local Presence (Articles 15.6)

Level of Government: Central

Measures: Canada Shipping Act, 2001, S.C. 2001, c. 26

Description: Investment and Cross-Border Trade in Services

1. To register a vessel in Canada, the owner of that vessel or the person who has exclusive possession of that vessel must

be:

(a) a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, S.C. 2001, c.27;

(b) a corporation incorporated under the laws of Canada or a province or territory; or

(c) when the vessel is not already registered in another country, a corporation incorporated under the laws of a country other than Canada if one of the following is acting with respect to all matters relating to the vessel, namely:

(i) a subsidiary of that corporation that is incorporated under the law of Canada or a province or territory,

(ii) an employee or director in Canada of any branch office of that corporation that is carrying on business in Canada, or

(iii) a ship management company incorporated under the law of Canada or a province or territory.

2. A vessel registered in a foreign country which has been bareboat chartered may be listed in Canada for the duration of the charter while the vessel's registration is suspended in its country of registry, if the charterer is:

(a) a Canadian citizen or permanent resident, as defined in subsection 2(1) of the Immigration and Refugee Protection Act, S.C. 2001, c.27; or

(b) a corporation incorporated under the law of Canada or a province or territory.

Reservation I-C-22

Sector: Transportation

Sub-Sector: Water Transportation

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Canada Shipping Act, 2001, S.C. 2001, c. 26

Marine Personnel Regulations, SOR/2007-115

Description: Cross-Border Trade in Services

Masters, mates, engineers, and certain other seafarers must hold certificates granted by the Minister of Transport as a requirement of service on Canadian registered vessels. These certificates may be granted only to Canadian citizens or permanent residents.

Reservation I-C-23

Sector: Transportation

Sub-Sector: Water Transportation

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Measures: Pilotage Act, R.S.C., 1985, c. P-14

General Pilotage Regulations, SOR/2000-132

Atlantic Pilotage Authority Regulations, C.R.C., c. 1264

Laurentian Pilotage Authority Regulations, C.R.C., c. 1268

Great Lakes Pilotage Regulations, C.R.C., c. 1266

Pacific Pilotage Regulations, C.R.C., c. 1270

Description: Cross-Border Trade in Services

Subject to Canada's Reservation II-C-8, a licence or a pilotage certificate issued by the relevant regional Pilotage Authority is

required to provide pilotage services in the compulsory pilotage waters of the territory of Canada. Only a Canadian citizen or permanent resident may obtain a licence or pilotage certificate. A permanent resident of Canada who has been issued a pilot's licence or pilotage certificate must become a Canadian citizen within five years of receipt of that licence or pilotage certificate in order to retain it.

Reservation I-C-24

Sector: Transportation

Sub-Sector: Water Transportation

Obligations Concerned: Most-Favored-Nation Treatment (Article 15.4)

Level of Government: Central

Measures: Coasting Trade Act, S.C. 1992, c. 31

Description: Cross-Border Trade in Services

The prohibitions under the Coasting Trade Act, set out in Canada's Reservation II-C-7, do not apply to any vessel that is owned by the Government of the United States of America, when used solely for the purpose of transporting goods owned by the Government of the United States of America from the territory of Canada to supply Distant Early Warning sites.

Reservation I-C-25

Sector: Transportation

Sub-Sector: Water Transportation Services by Sea-going and Non-sea-going Vessels

Obligations Concerned: Local Presence (Article 15.6)

Level of Government: Central

Measures: Shipping Conferences Exemption Act, 1987, R.S.C. 1985, c.17 (3rd Supp.)

Description: Cross-Border Trade in Services

Members of a shipping conference must maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

Reservation I-C-26

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Most-Favored-Nation Treatment (Article 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Level of Government: Regional

Measures: An existing non-conforming measure of a province and territory.

Description: Investment and Cross-Border Trade in Services

ANNEX II. EXPLANATORY NOTE

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 14.12 (Non-Conforming Measures) and 15.7 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 14.4 (National Treatment) or 15.3 (National Treatment);

(b) Article 14.5 (Most-Favored-Nation Treatment) or 15.4 (Most-Favored-Nation Treatment);

(c) Article 14.10 (Performance Requirements);

(d) Article 14.11 (Senior Management and Boards of Directors);

(e) Article 15.5 (Market Access); or

(f) Article 15.6 (Local Presence).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 14.12.1(a) (Non-Conforming Measures) and 15.7.1(a) (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry;

(d) Description sets out the scope or nature of the sectors, subsectors, or activities covered by the entry to which the reservation applies; and

(e) Existing Measures identifies,for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors, or activities covered by the entry

3. For greater certainty, in the interpretation of an entry, all elements of the entry shall be considered, and the Description element prevails over all other elements.

In accordance with Articles 14.12.2 (Non-Conforming Measures) and 15.7.2 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

ANNEX II. SCHEDULE OF MEXICO

Level of Government: Central

Description: Investment and Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure relating to investment in, or the supply of, gambling and betting services.

Existing Measures:

Sector: Minority Affairs

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 15.3) Local Presence (Article 15.6)

Level of Government: Central

Description: Cross-Border Trade in Services Mexico reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged groups.

Existing Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 4.

Sector: Social Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4 and Article 15.3) Most-Favored-Nation Treatment (Article 14.5 and Article 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Level of Government: Central

Description: Investment and Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure with respect to the supply of public law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

Existing Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Articles 4, 17, 18, 25, 26, 28 and 123.

Sector: Transportation

Sub-Sector: Specialized personnel

Industry Classification: CMAP 951023 Other Professional, Technical and Specialized Services (limited to ship captains; aircraft pilots; ship masters; ship machinists; ship mechanics; airport administrators (comandantes de aeródromos); harbor masters; harbor pilots; crew on Mexican flagged vessels or aircrafts)

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4) Local Presence (Article 15.6)

Level of Government: Central

Description: Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure with respect to specialized personnel. Only Mexican nationals by birth may serve as:

(a) captains, pilots, ship masters, machinists, mechanics, and crew members manning vessels or aircraft under the Mexican flag; and

(b) harbor pilots, harbor masters, and airport administrators.

Existing Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos), Article 32

Sector: All

Sub-Sector: Telegraph, radiotelegraph and postal services Issuance of bills (currency) and minting of coinage

Control, inspection and surveillance of maritime and inland ports Control, inspection and surveillance of airports and heliports

Industry Classification:

Obligations Concerned: National Treatment (Article 14.4) Most-Favored-Nation Treatment (Article 14.5) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11)

Level of Government: Central

Description: Investment

The activities set out in this list are reserved to the Mexican State, and private equity investment is prohibited under Mexican Law. If Mexico allows private investment to participate in such activities through service contracts, concessions, lending arrangements, or any other type of contractual arrangement, this participation shall not be construed to affect the State-s reservation of those activities.

If Mexican law is amended to allow private equity investment in an activity set out in this list, Mexico may impose restrictions on foreign investment participation and those restrictions shall be deemed existing Annex I non-conforming measures and subject to paragraph 1 of Article 14.12 (Non-Conforming Measures). Mexico may also impose restrictions on foreign equity investment participation when selling an asset or ownership interest in an enterprise engaged in activities set out in this list, and those restrictions shall be deemed existing Annex I non-conforming measures and subject to paragraph 1 of Article 14.12 (Non-Conforming Measures).

(a) Telegraph, radiotelegraph and postal services;

(b) Issuance of bills (currency) and minting of coinage;

(c) Control, inspection and surveillance of maritime and inland ports;

(d) Control, inspection and surveillance of airports and heliports; and

(e) Nuclear power.

For greater certainty, nuclear power includes radioactive minerals.

Existing Measures: Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos) Articles 25 and 28.

Law of the Bank of Mexico (Ley del Banco de México).

Law of the House of Currency of Mexico (Ley de la Casa de Moneda de México).

United Mexican States Monetary Law (Ley Monetaria de los Estados Unidos Mexicanos).

Navigation and Maritime Commerce Law (Ley de Navegacion y Comercio Marítimos).

Ports Law (Ley de Puertos).

Airports Law (Ley de Aeropuertos).

Federal Telecommunication and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusi6n).

Decree that establish the decentralized agency of Navigation Services in the Mexican Airspace, SENEAM (by its acronym in Spanish) (Decreto que crea el Organismo Desconcentrado de Servicios a la Navegación en el Espacio Aéreo Mexicano, SENEAM).

General Means of Communication Law (Ley de Vias Generales de Comunicacion).

Mexican Postal Service Law (Ley del Servicio Postal Mexicano), Title I, Chapter I.

Foreign Investment Law (Ley de Inversión Extranjera).

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: Most-Favored-Nation Treatment (Article 14.5)

Level of Government: Central

Description: Investment

Mexico reserves the right to adopt or maintain any measure granting different treatment to countries accorded under all bilateral or multilateral international agreements in force prior to the date of the entry into force of this Agreement.

Mexico reserves the right to adopt or maintain any measure granting different treatment to countries accorded under all international agreements in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures:

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 15.5)

Level of Government: Central and Regional

Description: Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure related to Article 15.5 (Market Access), except for the following sectors and sub-sectors subject to the limitations and conditions listed below.

For the purpose of this entry:

(a) “1)” refers to the supply of a service from the territory of one Party into the territory of any other Party;

(b) “2)” refers to the supply of a service in the territory of one Party by a person of that Party to a person of the other Party;

(c) “3)” refers to the supply of a service in the territory of one Party by an investor of the other Party or a covered investment; and

(d) “4)” refers to the supply of a service by a national of one Party, in the territory of any other Party.

This entry:

(a) applies to the central level of government;

(b) applies to the regional level of government in accordance with specific commitments of Mexico under the Article XVI of GATS which exist at the date of entry into force of this Agreement; and

(c) does not apply to municipal or local level.

This entry does not apply to entries listed in Annex I with respect to Article 15.5 (Market Access). Mexico-s limitations on market access in this entry are only those limitations which are not discriminatory.

Sector or subsector	Limitations on market access
1.BUSINESS SERVICES	
1. A. Professional services (1)	
a) Legal services (CPC 861)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Accounting, auditing and bookkeeping services (CPC 862)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
d) Consultancy and technical studies for architecture (CPC 8671)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
e) Consultancy and technical services for engineering (CPC 8672)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

f) Integrated engineering services (CPC 8673)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
g) Urban planning and landscape architectural services (CPC 8674)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
h) Related scientific and technical consulting services (CPC 8675)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
i) Medical and dental services (CPC 9312)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
k) Other services - Religious services (CPC 95910)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
1. B. Computer and Related Services	
a) Consultancy services related to the installation of computer hardware (CPC 841)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Software implementation services (CPC 842)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
c) Data processing services (CPC 843)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
d) Data base services (CPC 844)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
e) Other (CPC 845+849)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
1. C. Research and Development Services (CPC 85) (other than research and technological development centres)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Research and experimental development	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary

services on engineering and technology (CPC 85103)	Entry for Business Persons).
- Research and development services on social sciences and humanities (CPC 852)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
1. D. Real estate services	
a) Real estate services involving own or leased property (CPC 821) Other than: Real estate services involving own property	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Real estate services on a fee or contract basis (CPC 822)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
1. E. Rental/Leasing Services without Operators	
a) Leasing or rental services concerning vessels without operator (CPC 83103)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Leasing or rental services concerning aircraft without operator (CPC 83104)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
c) Leasing or rental services concerning other means of transport without operator (limited to private cars without operator CPC 83101)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Leasing or rental services concerning	

means of maritime transport without operator	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
d) Leasing or rental services concerning other machinery and equipment without operator:	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Rental services concerning agricultural and fishery machinery and equipment (CPC 83106)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Rental services concerning machinery and equipment for industry (CPC 83109)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
e) Other - Rental services concerning electronic equipment for data processing (CPC 83108)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Leasing or rental services concerning other personal or household goods (CPC 83209)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Rental services concerning office equipment and furniture (CPC 83108)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Rental services concerning televisions, sound equipment, video-cassette tecorders and musical instruments (CPC 83201)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Rental services concerning professional photographic	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

equipment and projectors (CPC 83209)	
- Rental services concerning other machinery, equipment and furniture not mentioned above (CPC 83109)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
1. F. Other Business Services	
a) Advertising and related activities (excluding broadcasting as well as testricted radio and television services) (CPC 871)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Market research services (CPC 8640)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
c) Management consulting services (CPC 8650)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
d) Administrative formalities and collection services (CPC 8660)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
e) Technical testing and analysis services (CPC 8676)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
f) Services incidental to agriculture, hunting and forestry	1) and 2) None 3)None except as indicated in 1.A
- Services incidental to agriculture (CPC 8811 limited to professional services incidental to agriculture)	Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Services incidental to animal husbandry (CPC 8812 limited to professional	1) and 2) None 3) None except as indicated in 1.A 4) Unbound, except as indicated

services incidental to animal husbandry)	in Chapter 16 (Temporary Entry for Business Persons).
- Services incidental to forestry and logging (CPC 88104)	1) and 2) None 3) None except as indicated in 1.A 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
g) Services incidental to fishing (CPC 882).	1), 2) and 3) None 4) Unbound except as indicated in Temporary Entry for Business Persons Chapter.
k) Placement and supply of services of personnel (CPC 8720)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
l) Protection and guard services (CPC 8730)	1) Unbound 2) None. 3) None, except that the requirements laid down for each specific means of transport must be fulfilled. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
n) Maintenance and repair of equipment except maritime vessels, aircraft and other transport equipment:	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Repair and maintenance of industrial machinery and equipment (CPC 8862)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Repair and maintenance of professional technical equipment and instruments (CPC 8866)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Repair services incidental to metal products, machinery and equipment. (CPC886)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Repair and maintenance of machinery and equipment for general use, not assignable to any specific activity (CPC 886)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

o) Building-cleaning services (CPC 8740)	1) None 2) Unbound* 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
p) Photographic services - Photography and motion-picture processing services (CPC 87505 and 87506)	1) None 2) Unbound* 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
r) Printing, publishing (CPC 88442) Only includes: - Publishing of books and similars - Printing and binding (except newsprint for circulation exclusively in the Mexican territory) Auxiliary and related industries with editing and printing (excludes manufacturing for printing types which are classified into 3811 branch, "casting and moulding of ferrous and nonferrous metal parts").	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
s) Convention services (CPC 87909***)	1) Unbound* 2)None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
t) Other - Credit reporting services (CPC 87901)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Speciality design services (CPC 87907)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Industrial design services (CPC 86725)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Photocopying and similar services (CPC 87904)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Translation and	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary

interpretation services (CPC 87905)	Entry for Business Persons).
- Laundry collection services (CPC 97011)	1) Unbound* 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
2.COMMUNICATION SERVICES	
B. Courier services	
-Courier services (CPC 7512)	1) Unbound 2) None 3) None, except that the requirements laid down for each specific means of transport must be fulfilled. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
C. Telecommunication Services Telecommunications services supplied by facilities based public telecommunications network (wire-based and radioelectric) through any technological medium, included in subparagraphs (a), (b), (c), (f), (g) and (o)	1) The international traffic only may be routed through international ports of a natural person or juridical person with a concession granted by the regulatory agency to install, operate or use a public telecommunication network in the Mexican territory authorized to provide long distance service. 2) None 3) The Federal Telecommunications Institute Cnstituto Federal de telecomunicaciones, IFT), shall reserve for community indigenous FM radio stations ten per cent of broadcasting band of FM that goes from 88 to 108 MHz. Such percentage shall be granted as concession for the upper part of the referred band. The Institute shall directly assign 90 MHz of the 700 MHz band for the operation and exploitation of a wholesale shared network through a concession for commercial use. Resellers of telecommunications of long distance and international long distance may contract telecommunications services (exclusively) with authorized concessionaires. The economic agent who has been declared preponderant in the telecommunications sector or the concessionaires that are part of the economic group to which the declared preponderant agent belongs to may not participate directly or indirectly in any reseller. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
a) Telephony Services (CPC 75211, 75212)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Packet-switched data transmission services (CPC 7523**)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
c) Circuit-switched data transmission services (CPC 7523**)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
f) Facsimile services (CPC 7521**+7529**)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
g) Private leased circuit services (CPC 7522**+7523**)	1) As indicated in 2.C.1). In Mexico it is not allowed allow the resale of private leased circuits to private networks. 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

o) Others - Paging services (CPC 75291)	1) As indicated in 2.C.1). 2) None 3) As indicated in 2.C.3) 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Cellular telephony (75213**)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Resellers (2)	1) As indicated in 2.C.1). 2) None 3) None, except that the establishment and operation of resellers is invariably subject to the relevant regulations. The Federal Telecommunications Institue (Instituto Federal de Telecomunicaciones, IFT) will not issue permits for the establishment of a reseller until the corresponding regulations are issued. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Other telecommunication services. Value-added services (Services that use public telecommunication network and have effect on the format, content, code, protocol, storage or similar aspects of the information transmitted by a user and which market users with additional information, different and restructured, or involve interaction user with information stored). (3)	1) Registration before the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT) is required to provide Value Added Services. The Value Added Services originated overseas destined to the Mexican territory may only be taken and delivered in Mexico through infrastructure or facilities of a public telecommunications network concessioner. 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
2.D. Audiovisual services	
a) Private production of cinematographic films (CPC 96112)	1), 2) and 3) None, except that film screening requires a permit issued by the Ministry of the Interior (Secretaría de Gobernación). 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
b) Private film-screening services (CPC 96121)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
	1) None 2) None 3) The Federal Institute of Telecommunications (Instituto Federal de Telecomunicaciones, IFT) shall grant upon request authorizations to access the multiprogramming. In the case of concessionaires belonging to an agent declared preponderant the IFT will not authorize the transmission of a number of channels greater than 50 per cent of the total amount of broadcasted television channels, including the multiprogramming ones, authorized for other concessionaires that

c) Radio and Television Services (CPC9613) - broadcasting (radio and free to air television)	are broadcasting in the region covered. Concessionaires of commercial, public and social use providing broadcasting service shall have daily free transmission in each station and for each programming channel, of duration up to 30 minutes whether continuous or discontinuous, dedicated to disseminate educational, cultural and social interest topics. In addition to the time set for the State, all concessionaires of commercial, public and social use providing broadcasting services shall be required to broadcast simultaneously in radio stations and television channels in the country when it comes to transmitting information of concern to the nation, according to the Ministry of Interior (Secretaria de Gobernacion). 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Restricted radio and television services	1) None 2) None 3) Concessionaires providing restricted or audio services shall reserve at no charge channels for the distribution of federal public institutions' television signals as indicated by the executive through the Federal Executive branch as follows: I. A channel with the service consists of 31 to 37 channels; II. Two channels, when the service consists of 38 to 45 channels, and III. Three channels, when the service consists of 46 to 64 channels. Beyond this last number, a channel shall be added for every 32 transmission channels. When the service consists of up to 30 channels, The Ministry may require, that a specific channel dedicates up to six hours daily for transmission of programming as indicated by the Ministry of the Interior (Secretaría de Gobernación). Concessionaires providing broadcasting or restricted television and audio services, as well as programmers and signals operators shall maintain a balance between advertising and programming transmitted daily, and the following rules shall apply: I. concessionaires of commercial use broadcasting: a) in television stations, the time spent on commercial advertising shall not exceed 18 percent of the total transmission time per programming channel, and b) in radio stations, the time spent on commercial advertising shall not exceed 40 percent of the total transmission time per programming channel. The length of commercial advertising does not include transmissions of the station own advertising, nor does it include State time and other Executive Branch provisions or programmes offering products or services; II. concessionaires of restricted television, and audio may transmit, daily and per channel, up to six minutes of advertising for every hour of transmission. For purposes of corresponding calculation, advertising in the broadcast signals that are retransmitted and programming channels own advertising shall not be considered, and the channels exclusively dedicated to programmes of product offerings, shall be exempted from the limit stated in the previous paragraph. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
3.CONSTRUCTION AND RELATED ENGINEERING SERVICES	
General construction work for buildings - Residential or housing building (CPC 5121 and 5122)	1) Unbound 2) Unbound* 3) None 4) Unbound
-Non-residential buildings (CPC 5124, 5127 and 5128)	1) Unbound 2) Unbound* 3) None 4) Unbound

General construction work for civil engineering -Construction of urban development works (CPC 5131 and 5135)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Construction of industrial buildings (excluding electric power stations and plants for the piping of oil and oil products (CPC 52121)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Other construction (excluding construction of maritime and river works, highway and transport works and track construction) (CPC 52269)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
D. Building completion and finishing work	
- Electrical, plumbing and drainage installations in buildings (excluding telecommunication installations and other special installations) (CPC 5161- 5164)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
E. Other - Special work, including earth moving, foundations, underground excavation, under-water work, signalling and protection installations, demolition, construction of drinking water or water treatment plants (excluding sinking of oil, gas	1) Unbound 2) Unbound* 3) None, except that services relating to visual and electronic aids for runways are subject to authorization by the Ministry of Communication and Transports (Secretaria de Comunicaciones y Transportes, SCT). 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

and water wells) (CPC 511 and 515)	
4. DISTRIBUTION SERVICES	
4.A Trade intermediary services (CPC 621) (includes sales agents who are not considered within the paid staff of any establishment in particular).	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
4.B. Wholesale trade services -Wholesale trade of non-food products, including animal feed (excluding petroleum-based fuels, coal, firearms, cartridges and ammunition) (CPC 622)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Commission agents' services (CPC 62113 - 621118)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Wholesale trade of food, beverages and tobacco (CPC 6222)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Wholesale trade services (CPC 622)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
4.C. Retail trade services: -Retail sales of food, beverages and tobacco in specialized establishments (CPC 6310)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Retail sales of food products in supermarkets, self-service stores and shops (CPC 6310)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

- Retail sales of non-food products in department stores and shops (CPC 632)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Retail sales of motor vehicles, including tyres and spare parts (CPC 61112)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Retail sales of non-food products in specialised establishments (excluding tetail sales of liquefied fuel gas, charcoal, coal and other non-petroleum- based fuels, paraffin, fuel, and tractor vaporising oil (TVO), gasoline and diesel, firearms, cartridges and ammunition) (CPC 6329)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
4.D. Franchise services	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
5.PRIVATE EDUCATION SERVICES	
5. A. Primary education services (CPC 921)	1) and 2) None 3) None except that prior authorization is required from the Ministry of Public Education (Secretaría de Educación Publica, SEP) or the State authority. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
5. B. Secondary education services (CPC 922)	1) and 2) None 3) None except that prior authorization is required from the Ministry of Public Education (Secretaría de Educación Publica, SEP) or the State authority. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
5. C. Higher education services (CPC 923)	1) and 2) None 3) None except that prior authorization is required from the Ministry of Public Education (Secretaría de Educación Publica, SEP) or the State authority. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
5.E. Other education services: - Language education, special education and commercial training (CPC 9290)	1) and 2) None 3) None, except that prior authorization is required from the Ministry of Public Education (Secretaría de Educación Publica, SEP) or the State authority. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

6. ENVIRONMENTAL SERVICES*	
6. A. Sewage services (CPC 9401)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
6. B. Additional environmental services - Refuse disposal services (CPC 9402)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Protection of ambient air and climate (CPC 9404)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Noise abatement services (CPC 9405)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Nature and landscape protection services (CPC 9406).	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Limited to environmental impact assessments and Consultancy services for environmental protection services (CPC 9409)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
6. C. Sanitation services (CPC 94030)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
8. HEALTH RELATED AND SOCIAL SER VICES	
8. A. Private hospital services (CPC 9311)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
8. B. Other human health services. - Private services of clinical laboratories auxiliary to medical diagnosis (CPC 93199)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Other private services auxiliary to	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter

medical treatment (CPC 93191)	16 (Temporary Entry for Business Persons).
- Dental prosthesis laboratory services (CPC 93123)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
9. TOURISM AND TRAVEL RELATED SERVICES	
9. A. Hotel and restaurant services	
- Hotel services (CPC 6411)	1), 2) and 3) None, except for the requirement of holding a permit to engage in the activity from the competent authority (Central, Regional or Local). 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Motel services (CPC 6412)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Board and lodging in guest houses and furnished accommodation (CPC 64192 and 64193)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Youth hostels and temporary camping facilities (CPC 64194)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Camping facilities for mobile homes (trailer parks) (CPC 64195)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 Temporary Entry for Business Persons).
-Restaurant services (CPC 642)	1), 2) and 3) None, except for the requirement of holding a permit to engage in the activity from the competent authority (Central, Regional or Local). 4) Unbound, except as indicated in Chapter 16 Temporary Entry for Business Persons).
- Cabarets and night clubs (CPC 6432)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Canteens, bars and taverns (CPC 6431)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 Temporary Entry for Business Persons).
B. Travel agencies and tour operators (CPC 7471)	1) None 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

C. Tourist guide services (CPC 7472)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 Temporary Entry for Business Persons).
9. D. Others	
- Spa services (CPC 97029) Only includes: Private services in social centres, recreational and sports. Also, sports clubs services, gyms, spas, swimming pools, sports fields, billiards, bowling, horses and bicycles. Excludes boats rental.	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Catering services, providing meals to outside (CPC 6423) (other than service on aircraft and in airports)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Bar services with entertainment (only in hotels and other lodging places)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Public house services without entertainment (CPC 6431) (except in hotels, other lodging places and other means of transport)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
10.RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)	
10. A. Entertainment services (including theatre, live bands and circus) (CPC 9619)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
10. B. News agency services (CPC 962)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

10. C. Libraries, archives, museums and other cultural services (CPC 963)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
10. D. Sporting and other recreational services (CPC 964) - Sports event organization services (CPC 96412)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Sports facility operation services (CPC 96413)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Other sporting services (only services provided by sport and game schools) (CPC 96419)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Promotion of sports services (CPC 96411)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
11.TRANSPORT SERVICES	
A. Maritime transport services International Transport (freight and passengers) (CPC 7211 and 7212, other than cabotage transport)	1) Scheduled, bulk, tramp and _ other international maritime transport, including passenger transport. Specific international high-sea transport may be reserved wholly or partly for shipping companies which are Mexican, or recognized as such, when the principles of free competition are not observed and the national economy is affected. 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Supporting services for water transport (CPC 745) (includes operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling, operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains,	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

pipelines and wharves; waterfront terminal operations)	
-Supporting services for water transport (CPC 745) (limited to Maritime Port Administration, Lake and Rivers)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Maritime cargo handling services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Storage and warehousing services, except general bonded warehouses (CPC 742)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Container station and depot services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Maritime agency services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Maritime freight forwarding services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Vessel maintenance and repair	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
11. C. Air transport services	
e) Supporting services for air transport -Airport and heliport administration services	1) Unbound 2) None 3) None, except that a concession from the Ministry of Communications and Transport (Secretaria de Comunicaciones y Transportes, SCT) is required to operate an airport. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
11. E. Rail transport services	
c. Pushing or towing services (CPC 7113)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
e. Supporting services for railway transport (CPC 743)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

11. F. Road transport services d) Maintenance and repair of road transport equipment. -Motor vehicle maintenance and repair services (CPC 6112 and 8867)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
Other supporting services for road transport (CPC 74490) (limited to main bus and truck terminals and bus and truck stations)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
e) Supporting services for road transport services (CPC 744) limited to Management Services of Roads, Bridges and Auxiliary Services	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
11. G. Pipeline transport. b) Transportation of other goods (CPC 7139) limited to Non-energy Pipelines)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
11. H. Services auxiliary to all modes of transport - Weighbridge services for transport purposes (CPC 7490)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Supporting services for air transport	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
11.1. Other transport services	
- Tramway transport (CPC 71211)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Subway transport (CPC 71211)	1) Unbound except as indicated in the horizontal section 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

- Rental of commercial vehicles with operator (CPC 7124)	1) Unbound except as indicated in the horizontal section 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
12. OTHER SERVICES	
-Repair of footwear and other articles of leather and skins	1), 2) and 3) None
-Footwear and leather goods repair services (CPC 63301)	4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Repair of electronic appliances mainly for household use (CPC 63302) - Repair services of electrical household appliances (CPC 63302).	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Repair of clocks, watches and jewelry (CPC 63303) - Watch, clock and jewelry repair services (CPC 63303)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Repair and cleaning of headgear (CPC 63304)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
-Repair of bicycles (CPC 63309) - Bicycle repair (CPC 63309)	1), 2) and 3) None 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).
- Locksmiths' trade (CPC 63309)	1) and 2) None 3) None, except that regional and local authorities are responsible for authorizing these services. 4) Unbound, except as indicated in Chapter 16 (Temporary Entry for Business Persons).

(1) In order to practice a profession in Mexico, it is necessary to have a degree that has been recognized or confirmed by the Ministry of Public Education (Secretaría de Educación Pública) and also to obtain a professional license. There are special requirements to be met by engineers, architects, and doctors.

(2) Companies which, without owning transmission means, provide third parties with telecommunications services by using capacity leased from a public network concessionaire.

(3) Value Added Services are not those services for which its establishment, operation or exploitation make use of transmission infrastructure

owned by the service provider, unless the service provider has the appropriate license or permit to establish, operate or exploit a public telecommunications network. It does not include those value-added services, the provision requiring the obtaining of licenses and permits including, without limitation, the following services: voice telephony, regardless of the technology used (VoIP) in its modalities of local service; long distance telephony; simple resale of leased private circuits, mobile telephony, mobile or fixed radio telephony, cable television, paid television using microwaves and satellite; paging services, trucking services; private or maritime radio-communication; restricted radio; data transmission; videoconferencing and vehicle radiolocation.

(4) The level of disaggregation of each of this sector's subsectors is interpreted in accordance with Mexico's domestic legislative framework and may not correspond exactly to the stated CPC classification.

* Unbound due to technical unfeasibility.

** The specified service constitutes only a part of the total number of activities covered by the corresponding CPC code.

*** The specified service is an element of a bigger CPC code added in another place in the list.

ANNEX II. SCHEDULE OF THE UNITED STATES

Sector:Communications

Sub-Sector:

Obligations Concerned:National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4)

Description:Investment and Cross-Border Trade in Services

With respect to Canada, the United States reserves the right to:

(a) adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services; and

(b) prohibit a person of a Party from offering DTH or DBS television and digital audio services into the territory of the United States unless that person establishes that the Party of which it is a person:

(i) permits U.S. persons to obtain a license for such services in that Party in similar circumstances; and

(ii) treats the supply of audio or video content originating in the Party no more favorably than the supply of audio or video content originating in a non-Party or any other Party.

Existing Measures:

Sector:Communications - Cable Television

Sub-Sector:

Obligations Concerned: National Treatment (Article 14.4) Senior Management and Boards of Directors (Article 14.11)

Description: Investment

The United States reserves the right to adopt or maintain any measure that prohibits a person of a Party from owning or operating a cable television system in the territory of the United States unless that person establishes that the Party:

(a) permits U.S. persons to own or operate such systems in the territory of the Party under similar circumstances; and

(b) treats the supply of video content originating in the Party no more favorably than the supply of content of any other Party or non-Party.

A measure may be deemed to treat content of a Party more favorably if it applies preferential treatment on the basis that

the director, producer, publisher, actors, or owner of such content is a person of that Party, or the production, editing or distribution of such content took place in the territory of that Party, or on any other basis that affords protection to local production.

Existing Measures:

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

Sector: Minority Affairs

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act.

Existing Measures: Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 et seq.

Sector: Transportation

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;

(b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;

(c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;

(d) requirements related to documenting a vessel under the U.S. flag;

(e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;

(f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;

(g) manning requirements for U.S.-flagged vessels;

(h) all matters under the jurisdiction of the Federal Maritime Commission;

(i) negotiation and implementation of bilateral and other international maritime agreements and understandings;

(j) limitations on longshore work performed by crew members;

(k) tonnage duties and light money assessments for entering U.S. waters; and

(l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment provided to a Party in (b) is conditional upon obtaining comparable market access in these sectors from that Party:

(a) vessel construction and repair; and

(b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies.

Existing Measures: Merchant Marine Act of 1920, §§ 19 and 27, 46 U.S.C. §§ 12101, 12118, 12120, 12132, 12139, 12151, 42101-42109, 55102, 55105-55110, 55115-55119, 58108

Waiver of the Navigation and Vessel-Inspection Laws, 46 U.S.C. § 501

Shipping Act of 1916, 46 U.S.C. §§ 50501, 56101, 57109, 50111

Merchant Marine Act of 1936, 46 U.S.C. §§ 109, 114, 50111, 50501, 53101 note, 53301-53312, 53501-53517, 53701-53718, 53721-53725, 53731-53735, 55304-55305, 57101-57104, 57301-57308

Merchant Ship Sales Act of 1946, 50 U.S.C. App. 1738

46 U.S.C. §§ 55109, 55111, 55118, 60301-60302, 60304-60306, 60312, 80104

46 U.S.C. §§ 12101 et seq., 12112, 12121, and 31301 et seq.

46 U.S.C. § 8904

Passenger Vessel Services Act, 46 U.S.C. § 55103

42 U.S.C. §§ 9601 et seq.; 33 U.S.C. §§ 2701 et seq.; 33 U.S.C. §§ 1251 et seq.

46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103, and 12107(b)

The Foreign Shipping Practices Act of 1988, 46 U.S.C. §§ 306, 41108, 42101, 42301-42307

Merchant Marine Act, 1920, 46 U.S.C. §§ 50101, 50302, 53101 note, 57108

Shipping Act of 1984, 46 U.S.C. §§ 305-306, 40101 note, 40101-40104, 40301-40307, 40501-40503, 40701-40706, 40901-40904, 41101-41109, 41301-41309, 42101, 42301-42307

Exports of Alaskan North Slope Oil, 104 P. L. 58, Title II; 109 Stat. 557, 560-63; codified at 30 U.S.C. §§ 185(s), 185 note

Limitations on performance of longshore work by alien crewmen, 8 U.S.C. § 1288

Maritime Transportation Security Act of 2002, P. L. 107-295, § 404; 116 Stat. 2064, 2114-15, codified at 46 U.S.C. § 55112

Nicholson Act, 46 U.S.C. §55114

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, P. L. 100-239; 101 Stat. 1778, codified in part at 46 U.S.C. §§ 108, 2101, 2101 note, 12113

43 U.S.C. § 1841

22 U.S.C. § 1980

46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the Operation of Pilotage on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445

Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.

Equipment and Repair of Vessels, 19 U.S.C. § 1466

North Pacific Anadromous Stocks Act of 1992, P. L. 102-567; Oceans Act of 1992, P. L. 102-587

Tuna Convention Act, 16 U.S.C. §§ 951 et seq.

South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973 et seq.

Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 et seq.

Atlantic Tunas Convention Act, 16 U.S.C. §§ 971 et seq.

Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. §§ 2431 et seq.

Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631 et seq.

American Fisheries Act, 46 U.S.C. § 12113 and 46 U.S.C. § 31322

Sector: Land Transportation

Sub-Sector:

Obligations Concerned: National Treatment (Article 15.3) Most-Favored-Nation Treatment (Article 15.4) Local Presence (Article 15.6)

Description: Cross Border Trade in Services

Notwithstanding the entry at ANNEX I – UNITED STATES – 9, the United States reserves the right to adopt or maintain limitations on grants of authority for persons of Mexico to provide cross-border long-haul truck services in the territory of the United States outside the border commercial zones if the United States determines that limitations are required to address material harm or the threat of material harm to U.S. suppliers, operators, or drivers. (1) The United States may only adopt such limitations on existing grants of authority if it determines that a change in circumstances warrants the limitation (2) and if the limitation is required to address material harm. (3) The Parties shall meet no later than five years after the entry into force of this agreement to exchange views on the operation of this entry.

Existing Measures:

(1) For purposes of this entry, “material harm” means a significant loss in the share of the U.S. market for long-haul truck services held by persons of the United States caused by or attributable to persons of Mexico.

(2) For greater certainty, a substantial increase in services supplied by the grantee may constitute a change in circumstances.

(3) The Parties confirm their shared understanding that current operations under existing grants of authority as of the date of entry into force of this Agreement are not causing material harm.

Sector: Betting and Gambling

Sub-Sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Market Access (Article 15.5) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure relating to betting and gambling services.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 15.5)

Description: Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services as set out in the U.S. Schedule of Specific Commitments under the GATS (GATS/SC/90, GATS/SC/90/Suppl.1, GATS/SC/90/Suppl.2, and GATS/SC/90/Suppl.3).

For purposes of this entry only, the U.S. Schedule of Specific Commitments is modified as indicated in Appendix II-A.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favored-Nation Treatment (Articles 14.5 and 15.4)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures:

APPENDIX II-A. United States

For the following Sectors, U.S. obligations under Article XVI of the GATS as set out in the U.S. Schedule of Specific Commitments under the GATS (GATS/SC/90, GATS/SC/90/Suppl. 1, GATS/SC/90/Suppl.2, and GATS/SC/90/Suppl.3) are improved as described.

Sector/Subsector	Market Access Improvements
Foreign Legal Consulting Services	Insert new commitments for the following states: Louisiana, New Mexico: No limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section". Arizona, Indiana, Massachusetts, North Carolina, Utah: No limitations modes 1-2; for mode 3 "in-state law office required", and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, an in-state law office required". Missouri: No limitations modes 1-2; for mode 3 "Association with in-state law office required", and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, association with an in-state law office required".

Accounting, Auditing, and Bookkeeping Services	Modify mode 3 limitation as follows: Sole proprietorships or partnerships are limited to persons licensed as accountants. Modify mode 4 limitation as follows: In addition, an in-state office must be maintained to receive a license to perform audits in.
Engineering Services. Integrated Engineering Services	Replace existing description of Mode 4 with "Unbound, except as indicated in the horizontal section".
Research and development services: R&D services on natural sciences, social sciences and humanities, and interdisciplinary R&D services, excluding R&D financed in whole or in part by public funds	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Technical testing and analysis services, other than government-mandated services or services financed in whole or in part by public funds	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Other business services: Other	Insert new commitments for "Other" under "Other business services" with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Express Delivery Services	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Other Delivery Services	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Multi-channel video services over provider-owned cable systems	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Information services (the offering of a capability for generating, acquiring, storing transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Higher Education Services (except flying instruction) (4)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".
Motion Picture & Video Tape Home Video Entertainment Production and Distribution. Promotion or advertising services. Motion picture or video tape (5) production services. Motion picture or video tape distribution services. Other services in connection with motion pictures and video tape (5) production and distribution. Motion Picture Projection Services. Radio and Television Services. Radio and Television	Insert commitments according to this revised classification with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section".

Distribution Services. Other services in connection with motion pictures and video tape (5) production and distribution (6)	
Environmental Services.Wastewater Management, excluding Water for Human Use (Wastewater services (contracted by private industry)). Solid/hazardous waste management (contracted by private industry). Refuse disposal services. Sanitation and Similar Services. Protection of ambient air and climate (Services to reduce exhaust gases and other emissions to improve air quality). Remediation and cleanup of soil and water (Treatment, remediation of contaminated/ polluted soil and water). Noise and vibration abatement (Noise abatement services). Protection of biodiversity and landscape (Nature and landscape protection services). Other environmental and ancillary services (Other services not classified elsewhere)	Insert commitments according to this revised classification with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section”.
Physical well-being services (7) (8)	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section”.
Road freight transport	Insert new commitments for domestic transportation with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section”.
Cargo-handling services, Storage and warehouse services, and Freight transport agency services, except maritime or air transport services	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section”.

(4) For transparency purposes, individual U.S. institutions maintain autonomy in admission policies, in setting tuition rates, and in the development of curricula or course content. Educational and training entities must comply with requirements of the jurisdiction in which the facility is established. In some jurisdictions, accreditation of institutions or programs may be required. Institutions maintain autonomy in selecting the jurisdiction in which they will operate, and institutions and programs maintain autonomy in choosing to meet standards set by accrediting organizations as well as to continue accredited status. Accrediting organizations maintain autonomy in setting accreditation standards. Tuition rates may vary for in-state and out-of-state residents. Additionally, admissions policies include considerations of equal opportunity for students (regardless of race, ethnicity, or gender), as permitted by domestic law, as well as recognition by regional, national, or specialty organizations; and required standards must be met to obtain and maintain accreditation. To participate in the U.S. student loan program, foreign institutions established in the United States are subject to the same requirements as U.S. institutions.

(5) For purposes of clarity, this class refers to theatrical and non-theatrical motion pictures, whether provided on fixed media or electronically.

(6) For greater clarity, distribution services in this context may include the licensing of motion pictures or video tapes to other service providers for exhibition, broadcasting, or other transmission, rental, sale or other use.

(7) For transparency purposes, this subsector includes physical well-being services such as delivered by, inter alia, fitness centers, spas, salons, massage (excluding therapeutic massage), and ayurvedics. This subsector does not include regulated medical services.

(8) For greater certainty, nothing in this commitment authorizes the provision of unregulated substances or affects the ability of state

authorities to regulate substances that may be affiliated with these services.

ANNEX II. SCHEDULE OF CANADA

Reservation II-C-1

Sector: Aboriginal Affairs

Sub-sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain measures conferring rights or preferences to aboriginal peoples. For greater certainty, Canada reserves the right to adopt and maintain measures related to the rights recognized and affirmed by section 35 of the Constitution Act, 1982 or those set out in self-government agreements between a central or regional level of government and indigenous peoples.

Existing Measures: Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11 as well as land claims agreements and self-government agreements that have been implemented by statute.

Reservation II-C-2

Sector: All Sectors

Sub-sector:

Obligations Concerned: National Treatment (Article 14.4)

Description: Investment

Canada reserves the right to adopt or maintain a measure relating to residency requirements for the ownership of oceanfront land by an investor of a Party or its investments.

Existing Measures:

Reservation II-C-3

Sector: Fisheries

Sub-sector: Fishing and Services Incidental to Fishing

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored Nation Treatment (Articles 14.5 and 15.4)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain any measure with respect to licensing fishing or fishing related activities, including entry of foreign fishing vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports, and use of any services therein.

Existing Measures: Fisheries Act, R.S.C. 1985, c. F14

Coastal Fisheries Protection Act, R.S.C. 1985, c.33

Coastal Fisheries Protection Regulations, C.R.C. 1978, c. 413

Commercial Fisheries Licensing Policy

Policy on Foreign Investment in the Canadian Fisheries Sector, 1985

Reservation II-C-4

Sector: Government Finance

Sub-sector: Securities

Obligations Concerned: National Treatment (Article 14.4)

Description: Investment

Canada reserves the right to adopt or maintain a measure relating to the acquisition, sale or other disposition by a national of a Party of bonds, treasury bills, or other kinds of debt securities issued by the Government of Canada or a Canadian sub-national government.

Existing Measures: Financial Administration Act, R.S.C. 1985, c. F-11

Reservation II-C-5

Sector: Minority Affairs

Sub-sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure conferring rights or privileges to a socially or economically disadvantaged minority.

Existing Measures:

Reservation II-C-6

Sector: Social Services

Sub-sector:

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure with respect to the supply of public law enforcement and correctional services, as well as the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

Reservation II-C-7

Sector: Transportation

Sub-sector: Water Transportation

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management and Boards of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure affecting the investment in or supply of marine cabotage services, including:

(a) the transportation of goods or passengers by vessel between points in the territory of Canada or above the continental shelf of Canada, directly or by way of a place outside Canada; but with respect to waters above the continental shelf of Canada, the transportation of goods or passengers only in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada; and

(b) the engaging by vessel in any other marine activity of a commercial nature in the territory of Canada and, with respect to waters above the continental shelf, in such other marine activities of a commercial nature that are in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada.

This reservation relates to, among other things, limitations and conditions for services suppliers entitled to participate in these activities, to criteria for the issuance of a temporary cabotage license to foreign vessels, and to limits on the number of cabotage licenses issued to foreign vessels.

For greater certainty, this reservation applies, among other things, to marine activities of a commercial nature undertaken by or from a vessel, including feeder services and repositioning of empty containers.

Existing Measures: Coasting Trade Act, S.C. 1992, c. 31

Canada Shipping Act, S.C. 2001, c.26

Customs Act, R.S.C. 1985, c.1 (2nd Supp.)

Customs and Excise Offshore Application Act, R.S.C. 1985, c. C-53

Reservation II-C-8

Sector: Transportation

Sub-Sector: Water Transportation

Obligations Concerned: Most-Favored-Nation Treatment (Article 15.4)

Description: Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure relating to the implementation of an agreement, arrangement, or other formal or informal undertaking with other countries with respect to maritime activities in waters of mutual interest in areas such as pollution control (including double hull requirements for oil tankers), safe navigation, barge inspection standards, water quality, pilotage, salvage, drug abuse control, or maritime communications.

Existing Measures:

Reservation II-C-9

Sector: Transportation

Sub-Sector: Water Transportation

Obligations Concerned: National Treatment (Articles 14.4 and 15.3) Most-Favored-Nation Treatment (Articles 14.5 and 15.4) Performance Requirements (Article 14.10) Senior Management Board of Directors (Article 14.11) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure denying a service provider or investor of the United States, or its investments, the benefits accorded to a service provider or investor of Mexico or any other country, or its investments, in sectors or activities equivalent to those subject to Schedule of the United States, Annex II, page Annex II – United States – 5.

Existing Measures:

Reservation II-C-10

Sector: Water Transportation

Sub-sector: Technical Testing and Analysis Services

Obligations Concerned: Most-Favored-Nation Treatment (Article 14.5) Local Presence (Article 15.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure affecting the statutory inspection and certification of a vessel on behalf of Canada.

For greater certainty, only a person, classification society or other organization authorized by Canada may carry out

statutory inspections and issue Canadian Maritime Documents to Canadian registered vessels and their equipment on behalf of Canada.

Existing Measures:

Reservation II-C-11

Sector: All Sectors

Sub-sector:

Obligations Concerned: Most-Favored-Nation Treatment (Articles 14.5 and 15.4)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Canada reserves the right to adopt or maintain a measure that accords differential treatment to countries under any bilateral or multilateral agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures:

Reservation II-C-12

Sector: All

Sub-sector:

Obligations Concerned: Market Access (Articles 15.5)

Description: Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure that is not inconsistent with:

Canada's obligations under Article XVI of GATS; (1) and

Canada's Schedule of Specific Commitments under the GATS (GATS/SC/16, GATS/SC/16/Suppl.1, GATS/SC/16/Suppl.1/Rev.1, GATS/SC/16/Suppl.2, GATS/SC/16/Suppl.2/Rev.1, GATS/SC/16/ Suppl.3, GATS/SC/16/Suppl.4 and GATS/SC/16/Suppl.4/Rev.1).

For greater certainty, this entry applies to measures adopted or maintained that affect the supply of a service by a covered investment pursuant to Article 15.5 (Market Access). For purposes of this entry only, Canada's Schedule of Specific Commitments is modified as indicated in Appendix I.

Existing Measures:

(1) For greater certainty, this includes obligations resulting from future amendments to Canada's Schedule to Article XVI of GATS.

APPENDIX I. Canada

For the following Sectors, Canada's obligations under Article XVI of GATS are improved as described.

Sector/Sub-sector	Market Access Improvements
Accounting, Auditing, and Book-	Under Mode 1 remove: Auditing - Commercial presence requirement: Nova Scotia. - Citizenship requirement for accreditation: Manitoba and Quebec. - Permanent residence requirement for accreditation: Ontario. Under Mode 2 remove: Auditing - Commercial presence requirement: Nova Scotia. - Citizenship

keeping services	requirement for accreditation: Manitoba and Quebec. - Permanent residence requirement for accreditation: Ontario.
Architectural services	Under Mode 1 remove: Architects - Citizenship requirement for accreditation: Quebec.
Engineering services	Under Mode 1 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec. Under Mode 2 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec.
Integrated engineering services	Under Mode 1 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec. Under Mode 2 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec.
Urban planning and landscape architectural services	Under Mode 1 remove: Community/ Urban Planning - Citizenship requirement for use of title: Quebec.
Real estate services	Under Mode 1 remove: Chartered Appraisers - Citizenship requirement for use of title: Quebec.
Management consulting services	Under Mode 1 remove: Agrologists - Citizenship requirement for accreditation: Quebec. Professional Administrators and Certified Management Consultants - Citizenship requirement for use of title: Quebec Professional Corporation of Administrators. Industrial Relations Counsellors - Citizenship requirement for use of title: Quebec. Under Mode 2 remove: Agrologists - Citizenship requirement for accreditation: Quebec.
Investigation and security services	Under Mode 3 remove: Business and Personnel Information Investigations - Foreign ownership restriction to 25 percent in total and 10 percent by any individual holding shares: Ontario.
Related scientific and technical consulting services	Under Mode 1 remove: Land Surveyors - Citizenship requirement for accreditation: Nova Scotia and Quebec. Subsurface Surveying Services - Citizenship requirement for accreditation: Quebec. Professional Technologist - Citizenship requirement for accreditation: Quebec. Chemists - Citizenship requirement for accreditation: Quebec. Under Mode 2 remove: Land Surveyors - Citizenship requirement for accreditation: Nova Scotia and Quebec. Subsurface Surveying Services - Citizenship requirement for accreditation: Quebec.
Other business services	Under Mode 1 remove: Certified Translators and Interpreters - Citizenship requirement for use of title: Quebec. Under Mode 2 remove: Certified Translators and Interpreters - Citizenship requirement for use of title: Quebec. Under Mode 3 remove: Collection Agencies - Foreign Ownership restriction to 25 percent in total and 10 percent by any individual: Ontario.

Courier services	Under Mode 3 remove: - Economic needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to supply proper service.): Nova Scotia and Manitoba.
General construction work for civil engineering	Under Mode 3 remove: Construction - An applicant and holder of a water power site development permit must be incorporated in Ontario.
Wholesale trade services	Under Mode 1 remove: Marketing of Fish Products (Nova Scotia): Nova Scotia residents require ministerial approval to enter into agreements with non-residents.
Railway passenger and freight transport	Under Mode 1 remove: - cabotage limitation
Road Passenger Transportation	Under Mode 3 remove: Interurban bus transport and scheduled services:- Public convenience and needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to supply proper service.): Prince Edward Island.
Road Freight transportation	Under Mode 3 remove: Highway freight transportation- Public convenience and needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to supply proper service.): British Columbia, Manitoba, Ontario, Prince Edward Island, Nova Scotia.
Telecommunications	Under Mode 3 remove: Nova Scotia: no person may vote more than 1,000 shares of Maritime Telegraph and Telephone Ltd.