FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF CHINA AND THE REPUBLIC OF PANAMA

The Government of the Republic of China (hereinafter referred to as "the ROC") and the Government of the Republic of Panama (hereinafter referred to as "Panama"), resolved to:

STRENGTHEN the traditional bonds of friendship and the spirit of cooperation among their people;

RECOGNIZE each nation's strategic and geographic position within its respective regional market;

ACHIEVE a better balance in their trade relationship;

CREATE an expanded and secure market for goods and services produced in their own territories;

RECOGNIZE the difference in the levels of development and in the size of their economies and the need to create opportunities for economic development;

AVOID distortions to bilateral trade;

ESTABLISH clear and mutually beneficial rules governing their trade in goods and services, as well as the promotion and protection of investments in their territories;

RESPECT their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization (WTO), as well as other bilateral and multilateral cooperation instruments;

ENHANCE the competitiveness of their firms in global markets;

CREATE employment opportunities and improve living standards of their people in their respective territories;

PROMOTE economic development in a manner consistent with environmental protection, conservation, and sustainable development;

PRESERVE their ability to safeguard the public welfare; and

PROMOTE the dynamic participation of different economic groups, particularly from the private sector, in order to strengthen the trade relations between both nations;

HAVE AGREED as follows:

Part ONE. GENERAL ASPECTS

Chapter 1. INITIAL PROVISIONS

Article 1.01. Establishment of the Free Trade Area

Through this Agreement and consistent with Article XXIV of the General Agreement on Tariffs and Trade of 1994 and Article V of the General Agreement on Trade in Services, the Parties hereby establish a free trade area.

Article 1.02. Enforcement

Each Party shall ensure the adoption of all necessary measures in accordance with its constitutional rules in order to comply with the provisions of this Agreement in its territory and in all levels of its government.

Article 1.03. Relation to other International Agreements

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

2. In the event of any inconsistency between the provisions of this Agreement and the provisions of the agreements referred to in paragraph 1, the provisions of this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

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

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

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

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

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

Article 1.04. Successor Agreement

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which the Parties are party.

Chapter 2. GENERAL DEFINITIONS

Article 2.01. Definitions of General Application

For purposes of this Agreement, except as otherwise provided for in another Chapter, the following terms shall be understood as:

chapter: the first two digits of the Harmonized System;

Commission: the Administrative Commission of the Agreement established pursuant to Article 18.01 (Administrative Commission of the Agreement);

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

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

(b) antidumping or countervailing duty that is applied pursuant to a Party's legislation and applied consistently with Chapter 7 (Unfair Trade Practices);

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

(d) premium offered or collected on or in connection with 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 Valuation Agreement: the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including its interpretative notes which forms part of the WTO Agreement;

days: calendar days, including Saturdays, Sundays and holidays;

enterprise: any legal entity constituted or organized under the applicable laws of a Party, whether or not for profit, and whether privately-owned or governmentally-owned, including any company, corporation, foundation, trust, partnership, sole proprietorship, joint venture or other association;

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

GATS: the General Agreement on Trade in Services, which forms part of the WTO Agreement;

GATT 1994: the General Agreement on Tariffs and Trade 1994, which forms part of the WTO Agreement;

goods: any material, substance, product or part;

goods of a Party: domestic products as understood in GATT 1994, or goods granted with this characterization by the Parties, including goods originating in that Party. Goods of a Party may incorporate materials from non-Parties;

Harmonized System: the "Harmonized Commodity Description and Coding System" as in effect, including its general rules of interpretation and the legal notes of its sections, chapters, headings and subheadings, as adopted and implemented by the Parties in their respective laws;

heading: the first four digits of the Harmoni zed System;

measures: any law, regulation, procedure, requirement, provision, or practice among other measures;

national: a natural person in accordance with Annex 2.01;

originating goods: goods that qualify as originating under the rules set out in Chapter 4 (Rules of Origin);

person: a natural person or an enterprise;

person of a Party: a national or an enterprise of a Party; Party: the Republic of Panama or the Republic of China;

producer: a person who manufactures, produces, processes or assembles a good; or who cultivates, grows, breeds, mines, extracts, harvests, fishes, traps, gathers, collects, hunts or captures a good;

Secretariat: "Secretariat" as established in accordance with Article 18.03 (Secretariat); state enterprise: an enterprise that is owned or controlled by a Party through ownership interests;

subheading: the first six digits of the Harmonized System;

tariff reduction schedule: "tariff reduction schedule"as established in accordance with Annex 3.04 (Tariff Reduction Schedule);

territory: the terrestrial, maritime and air space of each Party as well as its exclusive economic zone and its continental shelf over which it exercises its sovereign rights and jurisdiction according to its domestic legislation and international law;

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

Uniform Regulations: "Uniform Regulations" as established in accordance with Article 5.12 (Uniform Regulations); and

WTO Agreement: the Marrakesh Agreement Establishing the World Trade Organization (WTO) on April 15, 1994.

Part TWO. TRADE IN GOODS

Chapter 3. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A. Definitions and Scope of Application

Article 3.01. Definitions

For purposes of this Chapter, the following terms shall be understood as:

advertising films: recorded visual media, with or without soundtracks, consisting essentially of images which demonstrate the nature or the function of the goods or services offered for sale or for lease by any person established or resident in the territory of a Party, provided that the films are suitable for its exhibitions to potential customers, and are not for the broadcasting to the general public, and provided that they are imported in packets in which each contains no more than one copy of each film and do not form part of a larger shipment;

agricultural goods: the goods classified in the following chapters, headings or sub- headings of the Harmonized System, according to the 1996 revision:

(Note: the descriptions are provided for reference)

Tariff Classification		Description
Chapters	01to24	less fish and fish products
Subheading	2905.43	Mannitol
Subheading	2905.44	Sorbitol
Heading	33.01	essential oils
Headings	35.01 to 35.05	albuminoidal substances, modified starches, glues
Subheading	3809.10	finishing agents
Subheading	3824.60	sorbitol other than that of subheading No. 2905.44
Headings	41.01 to 41.03	hides and skins
Heading	43.01	raw fur skins
Headings	50.01 to 50.03	raw silk and silk waste
Headings	51.01 to 51.03	wool and animal hair
Headings	52.01 to 52.03	raw cotton, cotton waste and cotton carded or combed
Heading	53.01	raw flax
Heading	53.02	raw hemp

commercial samples of negligible value or of non-commercial value: commercial samples (individually or in the aggregated shipment) valued no more than one US dollar or the equivalent amount counted in whatever currency of the Parties, or marked, torn, perforated or treated in the way which are unsuitable for sales or for any way except of sample use;

consumed:

(a) actually consumed; or

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

goods for exhibition or demonstration: including components, auxiliary devices and accessories;

goods imported for the purposes of sports: the sports equipment used in sports contests, events or training in the territory of the Party into whose territory such goods are imported, provided the goods are finished products;

printed advertising materials: the pamphlets, printings, leaflets, trade catalogs, yearbooks published by trade associations, materials and posters of tourism promotions which are used to promote, publicize, or advertise goods or services, are distributed free of charge, and are classified in Chapter 49 of the Harmonized System;

repairs or alterations: activities which do not include operations or processes that destroy the basic characteristics of a good or create a new or commercially different good. For this purpose, it shall be understood that an operation or process that forms part of the production or assembly of an unfinished good and transform it into a finished good does not mean a repair or alteration of the unfinished good;

subsidies to exports of agriculture goods: those are related to:

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

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

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

agricultural goods concerned or on agricultural goods from which the exported product is derived;

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

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

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

temporary admission of goods: the temporary admission of goods or the temporary import of goods.

Article 3.02. Scope of Application

This Chapter applies to the trade in goods between the Parties, except as otherwise provided in this Agreement.

Section B. National Treatment

Article 3.03. National Treatment

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

2. For purposes of paragraph 1, each Party shall grant the goods of the other Party the treatment no less favorable than the most favorable treatment granted by this Party to the like, directly competitive or substitutable goods of its national origin.

Section C. Tariffs

Article 3.04. Tariff Reduction Schedule

1. Upon the entry into force of this Agreement, the Parties commit themselves to ensuring access to their respective markets by means of elimination of customs duties, on the trade of originating goods according to the tariff reduction schedule described in Annex 3.04, unless otherwise provided therein.

2. Except as otherwise provided in this Agreement, the purpose of this Article is not to prevent a Party from maintaining or increasing a customs tariff as may be allowed by the WTO Agreement or any other agreement which forms part of the WTO.

3. Paragraph 1 does not prohibit a Party from increasing a customs tariff to a level not higher than that established in its respective tariff reduction schedule if previously this tariff had been unilaterally reduced to a level lower than that established in the tariff reduction schedule. During the tariff reduction process the Parties shall undertake to apply in their trade in originating goods the lowest tariff obtained by comparing the level established in accordance with its respective tariff reduction schedule and the level in force according to Article I of GATT 1994.

4. At the request of any Party, the Parties shall carry out consultations to consider the possibility of accelerating the phasing out of customs tariffs under the tariff reduction schedule s .

5. Notwithstanding the provisions of paragraphs 1 through 4, a Party may maintain, adopt or modify any tariff on goods excluded from the tariff reduction schedule as provided in Annex 3.04.

Article 3.05. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission to import from the territory of the other Party for:

(a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 14 (Temporary Entry for Business Persons);

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

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

(d) commercial samples and advertising films.

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

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

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

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

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

(e) be easily identifiable when exported;

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

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

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

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

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

(c) be easily identifiable when exported;

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

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

4. Where a good temporarily admitted duty-free under paragraph 1 do not fulfill whatever conditions that a Party imposes under paragraph 2 or 3 that Party may impose:

(a) customs tariff and other charges which are levied on the import; and

(b) any criminal, civil or administrative penalties as may be appropriate under the circumstances.

Article 3.06. Duty-Free Entry of Certain Commercial Samples of Negligible Value or of Non-Commercial Value and Printed Advertising Materials

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

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

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

Article 3.07. Goods Re-Entered after Repair or Alteration

1. Neither Party may apply a customs tariff to a good that re-enters its territory after that good has been exported from its territory to the territory of the other Party for repair or alteration.

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

3. The terms “re-entered its territory” referred to in paragraph 1, and “imported temporarily”referred to in paragraph 2, shall be understood under the respective laws of the Parties.

Article 3.08. Customs Valuation

Upon the entry into force of this Agreement, the principles of customs valuation applied to regulating trade between the Parties shall be that established in the Customs Valuation Agreement, including its annexes. Besides, the Parties shall not determine the customs value of the goods based on the officially established minimum value.

Section D. Non-Tariff Measures

Article 3.09. Domestic Supports

1. The Parties recognize that domestic support measures may be of crucial importance to their agriculture sectors, but it may also distort trade and affect production. In this sense the Parties shall apply domestic supports in accordance with the Agreement on Agriculture of the WTO, and any other successor agreements to which the Parties are party. Where a Party decides to support its agriculture producers, it shall endeavor to work toward the domestic support policy that:

(a) has minimal or no trade distorting or production effects; or

(b) is in accordance with its respective commitments in the WTO.

2. In order to ensure the transparency of the support policy to agriculture, the Parties agree to carry out continuous and permanent analysis of such policy. For these purposes, the acquired information shall be used as principal reference in these respective annual notifications to the WTO Committee on Agriculture, and the copies of the notifications may be exchanged upon the request of a Party. Without prejudice to the aforementioned, each Party may request the other Party for additional information and explanations. Such request shall be responded immediately. The information and the resulting evaluations may be subject to consultations, at the request of the other Party, in the Committee on Trade in Goods.

Article 3.10. Export Subsidies

1. The Parties share the objective of the elimination of export subsidies for agricultural and non-agricultural products as required under the WTO Agreement, and upon the entry into force of this Agreement, shall cooperate to achieve such objectives.

2. The Parties are also committed not to re-introducing any export subsidies notwithstanding the result of future multilateral negotiations on the Agreement on Subsidies and Countervailing Measures and the Agreement o n Agriculture.

Article 3.11. Import and Export Restrictions

1. The Parties agree to eliminate non-tariff barriers immediately, with exception of the Parties' rights in accordance with Article XX and XXI of GATT 1994, and those regulated in Chapter 8 (Sanitary and Phytosanitary Measures) and Chapter 9 (Standard, Metrology-related Measures and Authorization Procedures)

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

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

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation or exportation of goods from or to a non-Party, nothing in this Agreement shall:

(a) be construed to prevent the Party from limiting or prohibiting the importation of goods of that non-Party from the territory of the other Party; or

(b) allow the Party requiring as a condition of export of such goods of the Party to the territory of the other Party, that the goods not be re-exported to a non-Party country, directly or indirectly, without being consumed in the territory of the other Party.

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

6. Paragraphs 1 through 4 shall not apply to the measures set in Annex 3.11(6).

Article 3.12. Customs Processing Fees and Consular Fees

1. After two years of the entry into force of this Agreement, neither Party shall apply an existing customs processing fee, nor shall adopt new customs processing fees on originating goods.

2. Upon the entry into force of this Agreement, neither Party shall collect consular fees or charges, nor shall require consular transactions on originating goods.

Article 3.13. Country of Origin Marking

1. Each Party shall apply to the goods of the other Party, while appropriate, its laws related to country of origin marking, according to Article IX of GATT 1994. For this purpose, Article IX of GATT 1994 is incorporated into and forms part of this Agreement.

2. Each Party shall accord to the goods from the other Party a treatment no less favorable than that it accords to the goods from a non-Party, regarding the application of rules on marks of origin, according to Article IX of GATT 1994.

3. Each Party shall ensure that the establishment and implementation of their laws on country of origin marking does not have the purpose or effect of creating unnecessary barriers to trade between the Parties.

Article 3.14. Export Taxes

Neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for local consumption.

Article 3.15. Measures Under Intergovernmental Agreements

Before adopting a measure under any intergovernmental agreement on goods, pursuant to subparagraph (h) of Article XX of GATT 1994, that may affect the trade in basic commodities between the Parties, a Party shall consult with the other Party to prevent the nullification or impairment of a concession granted by the Party according to Article 3.04.

Article 3.16. Committee on Trade In Goods

1. The Parties hereby establish the Committee on Trade in Goods, as set out in Annex 3.16.

2. The Committee shall consider matters relevant to this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures), and Uniform Regulations.

3. Without prejudice to the provisions of Article 18.05(2) (Committees), the Committee shall have the following functions:

(a) to submit to the Commission for its consideration of the matters that impede the access of goods to the territory of the Parties, especially the implementation of non-tariff measures; and

(b) to promote trade in goods between the Parties through consultations and studies intended to modify the period established in Annex 3.04, in order to accelerate the tariff reduction.

Chapter 4. RULES OF ORIGIN

Article 4.01. Definitions

For purposes of this Chapter, the following terms shall be understood as:
CIF: the value of imported goods including the costs of insurance and freight to the port or place in the importing country;

FOB: free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

fungible goods: goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical and which are impossible to tell apart from visual examination alone;

generally accepted accounting principles: principles applied in the territories of each Party which give a substantial and authorised support to the registration of income, costs, expenditures, assets and liabilities related to the information and preparation of financial statements. These indicators, practical rules and procedures used generally in accounting can become a comprehensive guide with general applicability;

goods wholly obtained or produced entirely in a Party:

(a) mineral goods extracted or taken in the territory of that Party;

(b) plants and plant products harvested, picked or gathered in the territory of that Party;

(c) live animals born and raised in the territory of that Party;

(d) goods obtained by hunting, trapping, fishing, gathering or capturing in the territory of that Party;

(e) goods obtained from live animals in the territory of that Party;

(f) fish, shellfish and other marine life taken outside the territorial sea of the Parties by fishing vessels registered or recorded with that Party and owned by a person of that Party and flying its flag, or by rented fishing vessels of a company established in the territory of that Party;

(g) goods obtained or produced on board factory ships from the goods referred to in subparagraph (f) provided such factory ships are registered or recorded with that Party and flying its flag, or on rented board factory ships of a company established in the territory of that Party;

(h) goods taken by that Party or a person of that Party from the seabed or beneath the seabed outside the territorial sea of that Party, provided that Party has rights to exploit such seabed;

(i) waste and scrap derived from manufacturing or processing operations or from consumption in the territory of that Party and fit only for disposal or for the recovery of raw materials;

(j) articles collected in the territory of that Party which can no longer perform their original purpose in its territory, nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials; or

(k) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j) above;

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

(a) fuel, energy, catalysts and solvents;

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

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

(d) tools, dies and molds;

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

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

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

material: a good that is used in the production of another good including ingredients, parts, components, subassemblies and goods that were physically incorporated into another good or were subject to a process in the production of another good;

producer: a “producer” according to Article 2.01 (Definitions of General Application);

production: methods of obtaining goods including manufacturing, producing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting, and capturing;

transaction value of a good: the price actually paid or payable for a good related to the transaction done by the producer of the good, according to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principle of paragraphs 1, 3 and 4 of its Article 8, regardless whether the good is sold for export. For purposes of this definition, the seller referred to in the Customs Valuation Agreement shall be the producer of the good;

transaction value of a material: the price actually paid or payable for a material related to the transaction done by the producer of the good, according to the principles of Article1 of the Customs Valuation Agreement, adjusted in accordance with paragraphs 1, 3 and 4 of its Article 8, regardless whether the material be sold for export. For purposes of this definition the seller referred to in the Customs Valuation Agreement shall be the supplier of the material, and the buyer referred to in the Customs Valuation Agreement shall be the producer of the good; and

value: the value of a good or a material according to the rules of the Customs Valuation Agreement.

Article 4.02. Application Instruments and Interpretation

1. For purposes of this Chapter:

(a) The Harmonized System shall be the basis for the tariff classification of goods; and

(b) The principles and rules of the Customs Valuation Agreement shall be applied to determine the value of a good or material.

2. For purposes of this Chapter, when applying the Customs Valuation Agreement

to determine the origin of a good:

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

(b) the provisions of this Chapter shall prevail over the provisions of the Customs Valuation Agreement to the extent of any inconsistency.

Article 4.03. Originating Goods

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

(a) the good is wholly obtained or produced entirely in the territory of that Party;

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

(c) the good is produced in the territory of one or both Parties from non- originating materials that complying with the change in tariff classification, regional value content or other requirements, according to the specifications stated in Annex 4.03, and the good satisfies all the other applicable requirements of this Chapter; or

(d) the good is produced in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good does not undergo a change in tariff classification due to :

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

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

(iii) the tariff subheading for the good provides for and specifically describes both the good itself and its parts;

provided that the regional value content of the good, determined in accordance with Article 4.07 is not less than thirty five (35%) percent and the good satisfies the other provisions applicable in this Chapter, unless the applicable rule of Annex 4.03, under which the good is classified, specified a different requirement of regional value content, in which case such requirement has to be met.

The rules provided for in this subparagraph do not apply to the goods in Chapters 61 through 63 of the Harmonized System.

2. If a good of a Party satisfies the rules of origin specified in Annex 4.03, there is no need to require additional compliance with the regional value content established in paragraph 1(d).

3. For purposes of this Chapter, the production of a good from non-originating materials that satisfies a change in tariff classification and other requirements, as set out in Annex 4.03, shall be done entirely in the territory of one or both Parties, and the good has to satisfy any applicable regional value-content requirement in the territory of one or both Parties.

4. Notwithstanding other provisions of this Article, goods shall not be considered originating, if they are exclusively the outcome of the operations set out in Article 4.04 and carried out in the territory of the Parties that gives their final form for marketing, where non-originating materials are used in such operations, unless the specific rules of origin of Annex 4.03 state the opposite.

Article 4.04. Minimal Operations or Processes

The minimal operations or processes that by themselves or in combination do not confer origin to a good are:

(a) operations necessary for the preservation of goods during the transportation or storage (including airing, ventilation, drying, refrigeration, freezing, elimination of damaged part, application of oil, antirust paint or protective coating, placing in salt, sulphur dioxide or other aqueous solution);

(b) simple operations consisting of cleaning, washing, sieving, sifting or straining, selection, classification or grading, culling; peeling, shelling or striping, grain removal, pitting, pressing or crushing, soaking, elimination of dust or of spoiled, sorting, division of consignments in bulk, grouping in packages, placing of marks, labels or distinctive signs on products and their packages, packing, unpacking or repackaging;

(c) combination or mixing operations of goods which have not resulted in any important difference in the characteristics of the goods before and after such combination or mixing;

(d) simple joining or assembling of parts of products to make a complete good, formation of set or assortments of goods;

(e) simple diluting operations or ionization and salting, which have not changed the nature of the goods; and

(f) slaughter of animals.

Article 4.05. Indirect Materials

Indirect materials shall be considered to be originating materials regardless of their place of manufacturing or production and the value of these materials shall be the costs as indicated in the accounting records of the producer of the good.

Article 4.06. Accumulation

1. A Party may only accumulate origin with goods originating from the territories of the Parties.

2. Originating materials or originating goods from the territory of a Party, incorporated into a good in the territory of the other Party shall be considered originating from the territory of the latter.

3. For purposes of determining whether a good is an originating good, the producer of such good may accumulate its production with that of other producer or producers in the territory of one or both Parties, of materials incorporated into the good, so that the production of these materials is considered as done by such producer, provided that the good satisfies the requirements of Article 4.03.

Article 4.07. Regional Value Content

1. The regional value content of goods shall be calculated according to the following method:
RVC = [(TV - VNM) / TV] * 100
Where:
RVC: is the regional value content, expressed as a percentage;
TV: is the transaction value of the good adjusted to a FOB basis, unless as stated in paragraph 2. In the event that there does not exist or it is not possible to determine the value in accordance with the principles and rules of Article 1 of the Customs Valuation Agreement, then this shall be calculated according to the principles and rules of Articles 2 through 7 of that Agreement; and
VNM: is the transaction value of non-originating materials adjusted to a CIF basis, unless stated in the paragraph 5. In the

event that there does not exist or it is not possible to determine the value according to the principles and provisions of Article 1 of the Custom Valuation Agreement, this shall be calculated in accordance with the principles and provisions of Articles 2 through 7 of that Agreement.

2. When the producer of a good does not export directly, the value shall be adjusted to the point where the buyer receives the good in the territory where the producer is located.

3. When the origin is determined by the method of regional value content, the percentage required is specified in Annex 4.03.

4. All the records of costs considered for the calculation of regional value content shall be registered and maintained according to the generally accepted accounting principles applicable in the territory of the Party from where the good is produced.

5. When a producer of a good acquires a non-originating material in the territory of the Party where it is located, the value of non-originating material shall not include freight, insurance, packing costs and any other cost incurred in the transportation of material from the warehouse of the supplier to the place of the producer.

6. For purposes of calculating the regional value content, the value of the non- originating material used in the production of a good shall not include the value of the non-originating materials used in the production of the originating material acquired and used in the production of that good.

Article 4.08. De Minimis

1. A good shall be considered to be an originating good if the value of all non- originating materials used in the production of that good that do not satisfy the requirement of change in tariff classification set out in Annex 4.03 is not more than ten percent (10%) of the transaction value of the good as determined in Article 4.07.

2. For a good provided for in Chapters 50 through 63 of the Harmonized System, the percentage indicated in the paragraph 1 refers to the weight of fibers or yarns with respect to the weight of the good being produced.

3. Paragraph 1 does not apply to a non-originating material used in the production of goods provided for in Chapters 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

Article 4.09. Fungible Goods

1. In the preparation or production of a good which uses originating or non- originating fungible goods, the origin of these goods can be determined by the application of one of the following methods of inventory management, to be selected by the producer:

(a) first in, first out (FIFO) method;

(b) last in, first out (LIFO) method; or

(c) averaging method.

2. Where originating or non-originating fungible goods are mixed or combined physically in warehouse and do not go through any production process or any operation other than unloading, reloading or any other necessary movement in the territory of the Party before the exportation to keep the good in good condition or to transport them to the territory of the other Party, the origin of the goods shall be determined by one of the inventory management methods.

3. Once the method of inventory management is selected it shall be used during the entire period or a fiscal year.

Article 4.10. Sets or Assortments of Goods

1. Sets or assortments of goods classified according to rule 3 of the General Rules of Interpretation of the Harmonized System and the goods whose description according to the Harmonized System nomenclature is specifically that of a set or assortment shall qualify as originating, provided that every good included in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.03.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating if the value of all non-originating goods used in making the set or assortment does not exceed the percentage set out in Article 4.08(1) with

respect to the value of the set or assortment, adjusted to the point set out in Article 4.07(1) or (2), as the case may be.

3. The provisions of this Article shall prevail over the specific rules established in Annex 4.03.

Article 4.11. Accessories, Spare Parts and Tools

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

(a) The accessories, spare parts or tools are not invoiced separately from the good; and

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

2. Where a good is subject to a regional value content requirement, its value of the accessories, spare parts or tools shall be considered as either originating or non- originating materials, as the case may be, in order to calculate the regional value content of the good.

3. For those accessories, spare parts and tools that do not satisfy the conditions mentioned above, the rules of origin shall apply to each of them respectively and separately.

Article 4.12. Containers and Packaging Materials for Retail Sale

1. Containers and packaging materials in which a good is packaged for retail sale shall, if classified with the good by Harmonized System code, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03.

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

Article 4.13. Containers and Packing Materials for Shipment

Containers and packing materials in which the good is packed for shipment shall be disregarded in determining whether:

(a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification as set out in Annex 4.03; and

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

Article 4.14. Transshipment

The originating goods of the other Party shall not lose such status when they are:

(a) transported directly from the territory of the other Party; or

(b) transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouses in such territory or territories, provided that they do not undergo operations other than unloading, reloading or any other operation to preserve them in good condition.

Chapter 5. CUSTOMS PROCEDURES

Article 5.01. Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

certifying authority: in the case of the Republic of China, the designated authority is the Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs (MOEA), or other agencies as authorized by BOFT; in the case of Panama, the designated authority is the Vice-ministry of Foreign Trade, or its successor;

commercial importation: the importation of a good into the territory of one of the Parties for the purpose of sale, or any commercial, industrial or other like use;

customs authority: the competent authorities responsible under their respective laws for the administration and implementation of customs laws and regulations;

customs value: value of a good used for calculating the customs tariff according to the legislation of each Party;

days: "days" according to Article 2.01 (Definitions of General Application);

exporter: an exporter located in the territory of a Party from where the good is exported and who, according to this Chapter, is required to maintain records in the territory of that Party under Article 5.05(1)(a);

identical goods: goods which are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance which are not relevant for the determination of origin of such goods under Chapter 4 (Rules of Origin);

importer: an importer located in the territory of a Party, and required to maintain records in the territory of that Party, under Article 5.05(1)(b);

preferential tariff treatment: the application of the tariff rate corresponding to an originating good according to the Tariff Reduction Schedule, pursuant to Article 3.04 (Tariff Reduction Schedule);

producer: a "producer" according to Article 2.01 (Definitions of General Application), located in the territory of a Party, and required to maintain records in the territory of that Party, under Article 5.05(1)(a);

resolution of origin determination: a resolution issued by the customs authority made as a result of an origin-verifying procedure which establishes whether a good qualifies as originating according to Chapter 4 (Rules of Origin);

valid Certificate of Origin: a certificate of origin written in the format referred to in Article 5.02(1), completed, signed and dated by an exporter of a good in the territory of a Party according to the provision of this Chapter and to the instructions for completing the certificate, and certified by the certifying authority of the exporting Party, pursua nt to the provision of this Chapter; and

value: the value of a good or material for the purpose of application of Chapter 4 (Rules of Origin).

2. Unless defined in this Article, the definitions established in Chapter 4 (Rules of Origin) are incorporated into this Chapter.

Article 5.02. Certification of Origin

1. For purposes of this Chapter, before this Agreement enters into force, the Parties shall develop a single format of Certificate of Origin, which shall enter into force with this Agreement and may thereafter be modified by mutual agreement.

2. The Certificate of Origin referred to in paragraph 1 shall be served to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good.

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

4. The Certificate of Origin shall be certified by the certifying authority of the exporting Party. For this purpose the certifying authority shall ensure that the good to which a Certificate of Origin is applicable, satisfies the requirements established in Chapter 4 (Rules of Origin) and in the Annex to Article 4.03 (Specific Rules of Origin).

5. Each Party shall require the Certificate of Origin be sealed, signed and dated by the certifying authority of the exporting Party, when the goods may be considered originating according to the requirement established in Chapter 4 (Rules of Origin) and in the Annex to Article 4.03 (Specific Rules of Origin). The Certificate of Origin shall also carry a serial number allowing its identification.

6. The certifying authority of each Party shall certify the origin of the goods covered by a Certificate of Origin, based on the information provided by the exporter or producer of the good, who shall be responsible for the veracity of the information provided and for those established in the Certificate of Origin. The certification shall be valid, while the circumstances or facts on which the certification is based do not change.

7. The certifying authority of the exporting Party shall:

(a) maintain the administrative procedures for certification of the Certificate of Origin that its producer or exporter completed and signed;

(b) provide, if requested by the customs authority of the importing Party, information about the origin of the imported goods with preferential tariff treatment; and

(c) notify in writing before this Agreement enters into force, a list of bodies entitled to issue the certificate referred to in subparagraph (a) of this Article, with the list of the name of the authorized officials and the corresponding seals and signatures. Modifications to this list shall be notified immediately in writing to the other Party and shall enter into force thirty (30) days after the date on which that Party receives that notification of the modification.

8. Each the exporter Party shall require that the Certificate of Origin be completed and signed by applicable to a single importation of one or more goods.

9. Each Party shall require that the Certificate of Origin be accepted by the customs authority of the importing Party for a period of one year from the signature date of the certifying authority.

10. Each Party shall require that the preferential tariff treatment not be denied if the goods covered by a Certificate of Origin are invoiced by the branches, subsidiary companies or agents of the producer or exporter in the territory of a non-Party, and provided that such goods are directly shipped from the territory of the other Party, without prejudice to the provisions of Article 4.14 (Transshipment).

Article 5.03. Obligations Regarding Importation

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

(a) complete a written declaration in the importation document required by its legislation, based on a valid Certificate of Origin, that a good qualifies as an originating good;

(b) have the Certificate of Origin in its possession at the time the declaration is made;

(c) provide, upon the request of customs authority of that Party, a copy of the Certificate of Origin; and

(d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains incorrect information. Where the importer presents the mentioned declaration before the customs authorities notify the revision, according to the domestic laws of each Party, the importer shall not be sanctioned.

2. Each Party shall require that, where an importer in its territory does not comply with any requirement established in this Chapter, the preferential tariff treatment for a good imported from the territory of the other Party shall be denied.

3. Each Party shall require that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at the time of entry, the importer of the good will not request for a refund or compensation of any excess duties paid.

4. Compliance with the provisions of this Article does not exempt the importer from the obligation to pay the corresponding customs tariffs according to the applicable laws of the importing Party, when the customs authority denies the preferential tariff treatment to goods imported, according to Article 5.06.

Article 5.04. Obligations Regarding Exportation

1. Each Party shall require its exporter or producer who has completed and signed a Certificate of Origin to present a copy of the Certificate of Origin to its customs authority on request.

2. Each Party shall require its exporter or producer that has completed and signed a Certificate of Origin or has provided information to its certifying authority, and that has reason to believe that this Certificate contains incorrect information, to notify promptly in writing :

(a) all persons to whom this Certificate was given;

(b) its certifying authority; and

(c) its customs authority according to its legislation, of any change that could affect the accuracy or validity of this Certificate, in which case the exporter or producer may not be sanctioned for having presented an incorrect certification or information.

3. Each Party:

(a) shall provide that if a false certification or information by its exporter or producer resulted in a good to be exported to the territory of the other Party qualifying as an originating good, that exporter or producer shall have the similar legal consequences, as would apply to an importer in its territory for contravening its customs laws and regulations by false statement or representation; and

(b) may apply such measures as the circumstances may warrant where its exporter or producer fails to comply with any requirement of this Chapter.

4. The customs authority and the certifying authority of the exporting Party shall notify in writing to the customs authority of the importing Party about the notification referred to in paragraph 2.

Article 5.05. Records

1. Each Party shall provide that:

(a) its exporter or producer that completes and signs a Certificate of Origin or provides information to its certifying authority shall maintain for a minimum period of five years from the date the Certificate was signed, all records and documents associated with the origin of the good, including those relating to:

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

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

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

(b) an importer applying for preferential tariff treatment shall maintain the Certificate of Origin and all the other documentation relating to the importation requested by the importing Party for a minimum period of five years from the date of importation of the good; and

(c) the certifying authority of the exporting Party that has issued a Certificate of Origin shall maintain all documentation relating to the issuance of the Certificate for a minimum period of five years from the issuing date of the Certificate.

2. A Party may deny preferential tariff treatment to a good subject to verification of origin, if the exporter, producer or importer of the good who shall maintain records or documents according to paragraph 1:

(a) does not maintain the records or documents for determining the origin of the good, according to the provisions of this Chapter and Chapter 4 (Rules of Origin); or

(b) denies access to the records or documents.

Article 5.06. Origin Verification Procedure

1. The importing Party may request through its customs authority to the certifying authority of the exporting Party information about the origin of a good.

2. For the purpose of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment qualifies as originating, each Party may verify the origin of the good through its customs authority by means of:

(a) written questionnaires to an exporter or a producer in the territory of the other Party;

(b) verification visits to an exporter or a producer in the territory of the other Party to review the records and documents that show compliance with rules of origin under Article 5.05 and to inspect the facilities used in the production of the good, and those used in the production of materials; or may commission the embassy in the territory of the other Party to visit the exporter or producer to verify the origin; or

(c) other procedures as the Parties may agree.

3. For purposes of this Article, the notifications of questionnaires, official letters, decisions, notices and other written communications sent to the exporter or producer for origin verification, shall be considered valid, provided that they are done by the following means:

(a) certified mail with acknowledgement of receipt or any other means that confirm the reception of this document by the exporter or producer; or

(b) any other means as the Parties may agree.

4. The provision of paragraph 2 shall be applied without prejudice to the authority of verification by the customs authority of the importing Party regarding the enforcement of other obligations of their own importers, exporters or producers.

5. The written questionnaire referred to in paragraph 2(a) shall:

(a) indicate the period available to the exporter or producer, which shall be no less than thirty (30) days from the date of receipt, to respond to the authority and return the questionnaire or the information and documentation requested; and

(b) include the notice of intention to deny preferential tariff treatment, in the event that the exporter or producer does not comply with the requirement of submitting the questionnaire duly completed or the requested information, within such period.

6. The exporter or producer that receives a questionnaire according to paragraph

2(a) shall respond to and return the questionnaire duly completed in the period established in paragraph 5(a), starting from the date of receipt. During this period, the exporter or producer may request in writing to the customs authority of the importing Party for an extension, which in this case shall not exceed thirty (30) days. This request shall not have the consequence of denying the preferential tariff treatment.

7. Each Party shall provide that where it received the responded questionnaire referred to in paragraph 2(a) within the corresponding period, each Party may still request for more information to determine the origin of the goods subject to verification. It may request, through its customs authority, for additional information from the exporter or producer, by means of a subsequent questionnaire, in which case the exporter or producer shall respond to the request and turn in the information in a period not exceeding thirty (30) days, from the date of receipt.

8. In case that the exporter or producer does not correctly respond to the questionnaires, or does not return the questionnaire within the corresponding period, as referred to in paragraphs 6 and 7 above, the importing Party may deny preferential tariff treatment to the goods subject to verification, by a prior decision in writing, addressed to the exporter or producer, including findings of fact and the legal basis for the determination.

9. Prior to conducting a verification visit pursuant to paragraph 2(b), the importing Party shall, through its customs authority, provide a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer to be visited, certifying authorities and the customs authority of the Party in whose territory the visit is to occur , and to the other Party's embassy in the territory of the importing Party, if it is requested by that other Party. The importing Party shall, through its customs authority, request the written consent of the exporter or producer to whom it intends to visit.

10. The notification referred to in paragraph 9 shall include:

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

(b) the name of the exporter or producer to whom it intends to visit;

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

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

(e) the names (personal information) and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

11. Any modification of the information referred to in paragraph 10(e) shall be notified in writing to the exporter or producer, to the customs authority and to the certifying authority of the exporting Party before the verification visit. Any modification of the information referred to in paragraph 10(a), (b), (c), (d) and (f) shall be notified according to paragraph 9.

12. Where an exporter or a producer has not given its written consent to a proposed verification visit within thirty (30) days of its receipt of a notification pursuant to paragraph 9, the importing Party may deny preferential tariff treatment to the good or goods that would have been the subject of the verification visit.

13 Each Party may require, where its customs authority receives a notification pursuant to paragraph 9 within fifteen (15) days of its receipt of the notification, postpone the proposed verification visit for a period not exceeding sixty (60) days from

the date the notification is received, or for a longer period as the Parties may agree.

14. A Party shall not deny preferential tariff treatment to a good solely due to the postponement of a verification visit pursuant to paragraph 13.

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

16. Each Party shall require that an exporter or a producer provide the records and documents referred to in Article 5.05(1)(a) to the customs authority of the importing Party. Where the records and documents are not in possession of an exporter or a producer, it may request the producer or supplier of the materials to deliver them to the customs authority in charge of the verification.

17. Each Party shall verify the compliance of the requirements on regional value content, the de minimis calculation or any other measure included in Chapter 4 (Rules of Origin) by its customs authority, according to the generally accepted accounting principles applied in the territory of the Party from where the good is exported.

18. The customs authority of the importing Party shall write a minute of the visit that shall include the facts confirmed by it. The producer or exporter and the designated observers may sign this minute accordingly.

19. Within 120 days after the conclusion of the verification, the customs authority shall provide a written decision to the exporter or producer of the goods subject to verification, determining whether the good is qualified as originating, including the findings of fact and the legal basis for the determination.

20. Where the customs authority denies preferential tariff treatment to a good or goods subject to a verification, this authority shall issue a written decision, well founded and reasoned, which shall be notified to the exporter or producer according to paragraph 3 and shall take effect the day after the receipt.

21. Where a verification by a Party demonstrates that an exporter or a producer has certified or provided more than once in a false or unfounded manner stating that a good qualifies as an originating good, the importing Party may suspend the preferential tariff treatment to the identical good that this person exports or produces, until that person establishes compliance with Chapter 4 (Rules of Origin) .

22. If, in two or more verifications of origin, two or more written decisions were made denying preferential tariff treatment to goods same as the good subject to verification, it shall be considered that an exporter or a producer has certified or provided information more than once in a false or unfounded manner stating that a good imported to the territory of a Party qualifies as originating

23. When the competent authority of the importing Party determines that a good imported into its territory does not qualify as originating, according to the tariff classification or the value applied by the Party to one or more materials used in the production of the good, and it differs from the tariff classification or from the value applied to the materials by the Party from where the good was exported, that Party shall provide that its decision shall not take effects until it is notified in writing to the importer of the goods and to the person who has filled in and signed the Certificate of Origin, as well as to the producer of the good.

24. A Party shall not apply a decision issued under paragraph 23 to an importation made before the effective date of the decision where:

(a) the customs authority of the Party from whose territory the good was exported has issued a decision on the tariff classification or on the value of such materials, on which a person is entitled to rely; and

(b) the mentioned decisions were given prior to the initiation of origin verification.

Article 5.07. Advance Rulings

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

(a) whether a good qualifies as originating, pursuant to Chapter 4 (Rules of Origin);

(b) whether the non-originating materials used in the production of a good comply with the corresponding change of tariff

classification in Annex 4.03 (Specific Rules of Origin);

(c) whether a good satisfies the regional value content requirement set out in Chapter 4 (Rules of Origin);

(d) whether the method applied by an exporter or a producer in the territory of the other Party according to the principles of the Customs Valuation Agreement for calculating the transaction value of the good or of the materials used in the production of the good for which an advance ruling is required is appropriate for the purpose of determining whether a good satisfies a regional value content requirement under Chapter 4 (Rules of Origin);

(e) whether a good that re-enters its territory after it has been exported from its territory to the territory of the other Party for repair or alteration qualifies for preferential tariff treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration); and

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

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2. Each Party shall adopt or maintain procedures for issuing advance rulings, including:

(a) the information which is reasonably required to process an application;

(b) the power of the customs authority to request at any time additional information from the person applying for the ruling, during the course of the evaluation;

(c) the obligation of the customs authority to issue the advance ruling within a period no longer than 120 days, once all necessary information has been collected from the applicant; and

(d) the obligation of the customs authority to issue the advance ruling in a completed, well-founded and reasoned manner.

3. Each Party shall implement an advance ruling for the imports into its territory, from the date of its issue or a later date as may be specified in the ruling, unless the advance ruling has been modified or revoked according to paragraph 5.

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

5. The advance ruling may be modified or revoked in the following cases:

(a) if the ruling is based on an error

(i) of fact,

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

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

(iv) in the application of the rules for determining whether a good that re- enters its territory after it has been exported from its territory to the territory of the other Party for repair or alteration qualifies for preferential tariff treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration);

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

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

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

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

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

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

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

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

(c) the supporting data and calculations used in the application of criteria or methods for calculating value were correct in all substantial aspects.

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

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

10. Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted substantial facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the customs authority that issued the advance ruling may apply measures in accordance with the legislation of each Party.

11. The Parties shall provide that the holder of an advance ruling may use it only while the facts or circumstances on which its issuance was based are maintained. In this case, the holder of the ruling may present the necessary information so that the issuing authority may proceed according to paragraph 5.

12. A good subject to a verification of origin or a request of review or appeal in the territory of either Party shall not be subject to an advance ruling.

Article 5.08. Confidentiality

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

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

Article 5.09. Recognition and Acceptance of the Re-Exportation Certificate

1. Without prejudice to paragraph 4, the Parties hereby establish the Re-Exportation Certificate, with the aim of identifying that goods re-exported from a free zone of one Party to the territory of the other Party are goods that come from a third country, provided that the following requirements are met:

(a) the goods remained under the control of the customs authority of the re- exporting Party;

(b) the goods were not subject to further processing or other operations, excepting marketing, unloading, reloading or any other operation necessary to maintain them in good shape; and

(c) the previous requirements are documentarily proved.

2. Based on paragraph 1, each Party shall require that a re-exporter of goods located in the free zone shall complete and sign a re-exportation certificate, which shall be authenticated by the customs authority and by the administrative authorities of the re-exporting free zone and shall cover only one importation of one or more goods to its territory.

3. Each Party, through its customs authority, may request the importer in its territory who imports goods from a free zone to submit the re-exportation certificate at the time of importation and to provide one copy thereof if the customs authority requires it, covering the goods that qualify as originating under agreements or trade conventions signed with third parties by the importing Party and that claim the trade preferences granted therein.

4. Provided the requirements of paragraph 5 are met, each Party shall require that the imports of goods covered by a re-exportation certificate that qualified as originating in conformity with other agreements or trade conventions signed by the importing Party with third parties do not lose the preference or tariff benefits granted by the importing Party, due to the fact

that the imports come from a free zone .

5. For the purpose of the application of paragraph 4, the Parties shall:

(a) establish a mechanism for the administration and control of these goods; and

(b) request the submission of a certificate of origin issued by third countries that benefit from the preferential tariff treatment described in paragraph4.

Article 5.10. Penalties

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

2. Each Party shall establish criminal, civil or administrative penalties for the certifying authority that issues a Certificate of Origin in a false or unfounded manner.

Article 5.11. Review and Appeal

1. Each Party shall accord the same rights of review and appeal of determinations of origin and advance rulings to its importers, or to the exporters or producers of the other Party who complete and sign a Certificate of Origin, or provide information for a good that has been the subject of a determination of origin pursuant to paragraph 19 of Article 5.06, or to whom have received an advance ruling pursuant to Article 5.07.

2. When a Party denies preferential tariff treatment to a good by a decision based on the non-fulfillment of a period established in this Chapter, with regard to the submission of records or other information to the customs authority of this Party, the ruling made in the review or appeal shall only deal with the compliance of the time period referred to in this paragraph.

3. The rights referred to in paragraphs 1 and 2 include access to at least one administrative review, independent from the official or office responsible for the determination or advance ruling under review, and access to a judicial review of the determination or ruling taken at the final instance of administrative review, according to the laws of each Party.

Article 5.12. Uniform Regulations

1. The Parties shall establish, and implement through their respective laws or regulations by the date this agreement enters into force, Uniform Regulations regarding the interpretation, application and administration of Chapter 4 (Rules of Origin), this Chapter and other matters as may be agreed by the Parties.

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

Article 5.13. Cooperation

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

(a) a determination of origin issued as the result of verification conducted pursuant to Article 5.06, once the petitions of review and appeal referred to in Article 5.11 of this Chapter are exhausted;

(b) a determination of origin that the Party considers contrary to a ruling issued by the customs authority of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good;

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

(d) an advance ruling or its modification, pursuant to Article 5.07 of this Chapter.

2. The Parties shall cooperate in the following aspects:

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

(b) to the extent possible and for purposes of facilitating the flow of trade between their territories, such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the standardization of data elements and the exchange of information;

(c) to the extent possible, the collection and exchange of documentation on customs procedures; and

(d) to the extent possible and for purposes of verifying the origin of a good, the customs authority of the importing Party may request to the certifying authority of the other Party to conduct in its territory some related investigations or inquiries, and to issue the corresponding reports.

Chapter 6. SAFEGUARD MEASURES

Article 6.01. Definitions

For purposes of this Chapter, the following terms shall be understood as:

Agreement on Safeguards: the Agreement on Safeguards which forms part of the WTO Agreement;

causal link: "causal link"as defined in the Agreement on Safeguards;

critical circumstances: those circumstances where a delay in the application of safeguard measure would cause damage difficult to repair;

domestic industry: the producers as a whole of the like or directly competitive goods which operate within the territory of a Party, or those producers whose whole production of the like or directly competitive goods constitutes a major proportion of the total domestic production of these goods;

investigating authority: "investigating authority"as according to Annex 6.01;

safeguard measure: all kinds of tariff measures as applied in accordance with the provisions of this Chapter. It does not include any safeguard measure derived from a proceeding initiated before the entry into force of this Agreement;

serious injury: "serious injury"as defined in the Agreement on Safeguards;

threat of serious injury: "threat of serious injury" as defined in the Agreement on Safeguards; and

transition period: the period stated in the Tariff Reduction Schedule plus 2 years.

Article 6.02. Bilateral Safeguard Measures

1. The application of the bilateral safeguard measures shall be governed by this Chapter, and supplementary by Article XIX of GATT 1994, the Agreement on Safeguards and the respective laws of each Party.

2. Subject to paragraphs 4 through 6 and during the transition period, each Party may apply a safeguard measure if, as a result of reduction or elimination of a customs tariff in accordance with this Agreement, an originating product from the territory of a Party is being imported into the territory of the other Party, in such increased quantity, in relation to domestic production and under such conditions that the imports of that product to the Party itself constitutes a substantial cause of serious injury, or a threat thereof to the domestic industry of the like or directly competitive product. The Party into whose territory the product is being imported may, to the minimum extent necessary, to remedy or prevent the serious injury, or threat thereof:

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

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

(i) the most-favored-nation (MFN) applied customs tariff in effect at the time the measure is taken, and

(ii) the MFN applied customs tariff in effect on the day immediately preceding the date of entry into force of this Agreement.

3. The following conditions and limitations shall be observed in the proceeding that may result in the application of a safeguard measure according to paragraph 2:

(a) a Party shall, without delay and in writing, notify the other Party of the initiation of the proceeding which could have as a consequence the application of a safeguard measure against a product originating in the territory of the other Party;

(b) any safeguard measure shall be initiated no later than one year counted from the date of the initiation of the procedure;

(c) no safeguard measure may be maintained:

(i) for more than two years, extendable for a period of one additional consecutive year, according to the proceeding stated in Article 6.04(21), or

(ii) after the termination of the transition period, unless with consent of the Party against whose product the measure is applied;

(d) during the transition period, the safeguard measures, with or without extension, may only be applied twice on the same product;

(e) a safeguard measure may be applied for a second time, provided that at least a period equivalent to the half of that one during which the safeguard measure has been applied at the first time has been passed;

(f) the period which a provisional safeguard measure has been applied shall be calculated for the purpose of determining the period of duration of the definitive safeguard measure established in subparagraph (c);

(g) the provisional measures that are not definitive shall be excluded from the limitation provided for in subparagraph (d);

(h) on the termination of the safeguard measure, the applied rate of import duty shall be the rate as that in the Tariff Reduction Schedule.

4. In critical circumstances where any delay would cause damage which it would be difficult to repair, a Party may apply bilateral provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that, as a result of the reduction or elimination of a customs tariff under this Agreement, the imports of the goods originating from the other Party have been increased in such rate and amount and under such conditions as to cause or threaten to cause serious injury. The duration of provisional measures shall not exceed 120 days.

5. Only with the consent of the other Party, a Party may apply a safeguard measure after the termination of transition period, in order to deal with cases of serious injury, or threat thereof, to the domestic industry that arise from the implementation of this Agreement.

6. The Party applying a safeguard measure according to this Article shall provide to the other Party a mutually agreed compensation, in the form of concessions having substantially equivalent trade effects or being equivalent to the value of the additional customs tariff expected to result from the safeguard measure. If the Parties concerned are unable to agree on the compensation, the Party against whose product the safeguard measure is applied may take tariff measures with trade effects substantially equivalent to the effects of the safeguard measure applied pursuant to this Article. The Party shall apply the tariff measure only during the minimum necessary period to achieve the substantially equivalent effects.

Article 6.03. Global Safeguard Measures

1. Each Party shall reserve its rights and obligations in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards, except those relating to compensation or retaliation and exclusion of a safeguard measure which are inconsistent with the provisions of this Article.

2. Any Party applying a safeguard measure in accordance with paragraph 1 shall exclude goods imported from the other Party from this measure unless:

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

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

3. To determine if:

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

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, the investigating authority shall consider factors such as the change in the import share of the other Party in the total imports, as well as the import volume of the other Party and the change of that volume has occurred. Normally the imports from a Party shall not be considered to contribute importantly to serious injury or the threat thereof, if its 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 during the same period.

4. A Party shall, without delay and in writing, notify the other Party of the initiation of

a proceeding that may result in the application of a safeguard measure in accordance with paragraph 1.

5. No Party may apply a measure under paragraph 1 which imposes restrictions on a product, without prior written notification to the Commission, and without appropriate opportunity for consultation with the other Party, as much far in advance of taking the action as practical.

6. Where a Party determines, in accordance with this Article, to apply a safeguard measure to those goods originating from the other Party, the measure applied to those goods shall consist, only and exclusively, of tariff measures.

7. The Party taking a safeguard measure under this Article shall provide to the other Party mutually agreed trade liberalization compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs tariffs expected to result from the safeguard measure.

8. If the Parties are unable to agree on the compensation, the Party against whose product the safeguard measure is applied may impose measures which have trade effects substantially equivalent to the effects of the safeguard measure applied pursuant to paragraph 1.

Article 6.04. Administration of Safeguard Measure Proceedings

1. Each Party shall ensure the consistent and impartial application of its laws, regulations, decisions and rulings governing all safeguard measures proceedings.

2. Each Party shall entrust the application of safeguard measure, the determination of the existence of serious injury, or threat thereof, to an investigating authority of each Party. These decisions may be subject to review by judicial or administrative proceedings of the Party, as provided in its domestic laws. The negative determinations on the existence of serious injury, or threat thereof, shall not be subject to modification by the investigating authority, unless the modification is required by such judicial or administrative review. The investigating authority under the domestic laws, in order to carry out these proceedings, shall be provided with all necessary resources to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for the application of safeguard measures, in accordance with the requirements indicated in this Article.

Institution of a Proceeding

4. The investigating authority may institute a proceeding, ex officio or by a request of the authorized entities in accordance with its laws, for the application of safeguard measure. The entity filing the petition shall demonstrate that it is representative of the domestic industry producing a product like or directly competitive with the imported product. For this purpose it shall be construed that the major proportion shall not be less than twenty five percent (25%).

5. Except as stated in this Article, the time periods that govern these proceedings shall be established in the domestic laws of each Party.

Contents of a Petition

6. Entities representing a domestic industry that file a petition to initiate an investigation shall provide the following information in the petition, to the extent that such information is publicly available from governmental or other sources, or its best estimates and the basis therefore if such information is not thus available:

(a) product description: the name and description of the imported product concerned, the tariff subheading under which that product is classified, its current tariff treatment and the name and description of the like or directly competitive domestic product concerned;

(b) representativeness:

(i) the names and addresses of the entities who present the request, as well as the location of the establishments where they produce the domestic product concerned,

(ii) the percentage of domestic production of the like or directly competitive product that such entities account for and the reasons for claiming that they are representative of the domestic industry, and

(iii) the names and locations of all other domestic establishments in which the like or directly competitive product is produced;

(c) import data: import data for each of the 3 full years immediately prior to the initiation of the proceedings relative to the application of a safeguard measure, that form the affirmative basis that the product concerned is imported in a steadily increasing manner, either in absolute terms or relative to domestic production as appropriate;

(d) domestic production data: data on total domestic production of the like or directly competitive product, for each of the 3 full years immediately previous to the initiation of the proceedings relative to the application of a safeguard measure;

(e) data showing injury, or threat thereof: quantitative and objective data indicating the nature and extent of injury, or threat thereof to the concerned domestic industry, such as data showing changes in the level of sales, prices, production, productivity, installed capacity utilization, market share, profits and losses, and employment;

(f) cause of injury: an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that the increased imports, relative to domestic production, of the imported goods are causing or threatening to cause serious injury, supported by pertinent data; and

(g) criteria for inclusion: quantitative and objective data indicating the share of imports coming from the territory of the other Party, and the petitioner's views on the extent to which such imports are contributing importantly to the serious injury, or threat thereof.

7. Once a petition is accepted, it shall promptly be made available for public inspection, except that it contains confidential information.

Consultations

8. Once a petition filed in accordance with paragraph 6 is accepted and in any case before the initiation of the investigation, the Party that intend to initiate the case shall notify and invite the other Party to hold consultations aimed at clarifying the situation.

9. During all the investigation period, the Party, whose goods are subject to the investigation, shall be given an adequate opportunity to continue consultations.

10. During these consultations, the Parties may deal, among others, the issues relating to the investigation procedures, elimination of the measure, the issues referred to in Article 6.02 (5) and, in general, to exchange opinions about the measure.

11. Without prejudice to the obligation to provide appropriate opportunity to hold consultations, the provisions of the paragraphs 8, 9 and 10 above regarding consultations are not aimed at preventing the competent authorities of either Party from proceeding promptly to initiate an investigation or from making preliminary or final determinations, positive or negative, nor to prevent them from applying measures under this Agreement.

12. The Party carrying out an investigation shall allow, if being requested, access to the Party whose product is the subject of the investigation to the public file, including the non-confidential summary of the confidential information used for the initiation or during the course of the investigation.

Notice Requirements

13. When initiating a proceeding for the application of a safeguard measure, the investigating authority shall publish the notice of the initiation of the proceeding in the official journal or the other nationally circulated newspaper in accordance with the domestic laws of each Party, within the period of thirty (30) days starting from the acceptance of the petition. The above-mentioned publication shall be notified to the other Party, without delay and in writing. The notification shall contain the following data: the name of the applicant; the indication of the imported product that is the subject of the proceeding and its tariff item number; the nature and timing of the determination to be made; the place where the request and other documents presented during the proceeding may be inspected; and the name, address and telephone number of the office to be contacted for more information. The periods to present the proofs, reports, statement and other documents shall be established in accordance with the legislation of each Party.

14. With respect to a proceeding for the application of a safeguard measure, initiated on the basis of a petition filed by an entity alleging itself as the representative of the domestic industry, the investigating authority shall not publish the notification required by paragraph 13 without evaluating carefully first if the petition meets the requirements set out in paragraph 6.

Public Hearing

15. In the course of each proceeding, the investigating authorities shall:

(a) without prejudice to the Party's legislation, and after providing reasonable notice, notify all interested parties, including importers, exporters, consumer groups and other interested parties the date and place of a public hearing fifteen (15) days before it is held, to allow them to appear in person or by representative, to present evidence, allegation and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and

(b) provide an opportunity to all interested parties appearing at the hearing to cross- exam the arguments presented by interested parties.

Confidential Information

16. For the purposes of Article 6.02, the investigating authority shall establish or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, and shall request the interested parties providing such information furnish non-confidential written summaries thereof. If the interested parties indicate that the information cannot be summarized, they shall explain the reasons why a summary cannot be provided. Unless it is demonstrated that the information is accurate, in a convincing way and from an appropriate source, the authorities may disregard that information.

17. The investigating authority shall not disclose any confidential information provided in accordance with any obligation related to the confidential information, that it has obtained in the course of the proceedings.

Evidence of injury, or threat thereof

18. In conducting its proceedings the investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, including the rate and amount of the increase in imports of the product concerned in relation with the domestic industry, the share of the domestic market taken by the increased imports, and changes in the level of sales, production, productivity, installed capacity utilization, profits and losses, and employment. In making its determination, the investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of entities in the domestic industry to generate capital.

Deliberation and Determination

19. Except in critical circumstances and in global safeguard measures involving perishable agricultural goods, the investigating authority, before making an affirmative determination in a proceeding for the application of a safeguard measure, shall allow sufficient time to gather and check the relevant information, shall hold a public hearing and provide adequate opportunity for all interested parties to prepare and submit their views.

20. The investigating authority shall publish promptly a final determination in the official journal or other nationaly circulated newspaper which shall indicate the results of the investigation and the reasoned conclusions on all pertinent issues of law and fact. The determination shall describe the imported product and its tariff item number, the standard applied and the finding made in the proceedings. The statement of reasons shall set out the basis for the determination, including a description of:

(a) the domestic industry seriously injured or threatened with serious injury;

(b) information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and

(c) if provided for by domestic law, any finding or recommendation regarding the appropriate remedy, as well as the basis therefor.

Extension

21. If the importing Party determines that the reasons justifying the application of a bilateral safeguard measure, the Party shall notify to the competent authority of the other Party its intention of extending the measure, at least ninety (90) days before it is expected to expire, and shall prove that the reasons leading to its application persist, for the purpose of holding respective consultations which shall be done according to the provisions of this Article.

22. Additionally, entities representing a domestic industry that submit the request for an extension, shall present a readjustment plan including variables controllable by the domestic industry or production involved.

23. The notifications of extension and compensation shall be presented pursuant to this Article before the expiration of the applied measures.

Article 6.05. Dispute Settlement In Safeguard Measure Matters

No Party shall request the establishment of an arbitral group under Article 19.09 (Request for an Arbitral Group) before the applicaton of any safeguard measure by the other Party.

Chapter 7. UNFAIR TRADE PRACTICES

Article 7.01. Scope and Coverage

1. The Parties confirm their rights and obligations according to Articles VI and XVI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994 and the Agreement on Subsidies and Countervailing Measures, that form part of the WTO Agreement. In this sense, the Parties shall ensure that their laws are consistent with the commitments taken in these agreements.

2. Each Party may initiate an investigation procedure and apply countervailing duties or antidumping duties in accordance with this Chapter, the agreements and articles referred to in paragraph 1, as well as its laws.

Article 7.02. Obligation for Completing an Investigation

1. The importing Party may end an investigation with respect to an interested party, where its competent authority determines that the dumping margin or the amount of the subsidy is de minimis, or that sufficient evidence of dumping, subsidy, injury, or causal link does not exist; or where its competent authority determines that the volume of the dumped or subsidized imports is insignificant.

2. For purposes of paragraph 1, it shall be considered that:

(a) the dumping margin is de minimis when it is less than 6%, expressed as a percentage of the export price;

(b) the amount of the subsidy is de minimis when it is less than 6% ad valorem; and

(c) the volume of the dumped or subsidized imports is insignificant if it represents less than 6% of the total imports of the like products of the importing Party.

3. An applicant may, at any time, withdraw its investigation request. Once a request for withdrawal is filed after the investigation has been initiated, the competent authority shall notify the rest of the applicants for the purpose of exerting their right of concurrence. If the applicants who disagree with the withdrawal do not represent a percentage of the national production necessary to initiate an investigation, then the investigation shall be terminated and the interested parties will be notified. The investigation may not be continued on the competent authority's own motion under any circumstance.

Part THREE. TECHNICAL BARRIERS TO TRADE

Chapter 8. SANITARY AND PHYTOSANITARY MEASURES

Article 8.01. Definitions

For purposes of this Chapter, the Parties shall apply the definitions and terms set out in:

(a) the Agreement on the Application of Sanitary and Phytosanitary Measures, that forms a part of the WTO Agreement, hereinafter referred to as ASPS;

(b) the Office International des Epizooties, hereinafter referred to as OIE;

(c) the International Plant Protection Convention, hereinafter referred to as IPPC; and

(d) the Codex Alimentarius Commission, hereinafter referred to as Codex.

Article 8.02. General Provisions

1. The authorities legally responsible for ensuring the compliance with the sanitary and phytosanitary obligations provided in this Chapter shall be deemed as the competent authorities.

2. The Parties, on the basis of the ASPS, established this framework of rules and disciplines that shall guide the adoption and implementation of sanitary and phytosanitary measures.

3. The Parties shall facilitate trade through mutual cooperation to prevent the introduction or spreading of pests or diseases and to improve plant health, animal health and food safety.

Article 8.03 . Rights of the Parties

The Parties, according to the ASPS, may:

(a) establish, adopt, maintain or implement any sanitary and phytosanitary measures in their territories, only to the extent necessary to protect human life and health (food safety) and animal life and health or to preserve plant health, even if they are stricter than international standards, guidelines or recommendations, provided that there is a scientific basis to justify them;

(b) implement the sanitary and phytosanitary measures only to the extent necessary to reach an appropriate level of protection; and

(c) verify that plants, animals, products and by-products bound for export are subject to sanitary and phytosanitary monitoring to ensure conformity with the requirements of the sanitary and phytosanitary measures established by the importing Party.

Article 8.04. Obligations of the Parties

1. Sanitary and phytosanitary measures shall not constitute a disguised restriction to trade and shall not have the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. Sanitary and phytosanitary measures shall be based on scientific principles, shall only be maintained if there are reasons to sustain them and shall be based on a risk assessment.

3. Sanitary and phytosanitary measures shall be based on international standards, guidelines or recommendations.

4. Where conditions are identical or similar, sanitary and phytosanitary measures shall not discriminate arbitrarily or unjustifiably.

Article 8.05. International Standards and Harmonization

With the aim to harmonize sanitary and phytosanitary measures, the procedures of control, inspection and approval of sanitary and phytosanitary measures of the Parties shall be based on the following principles:

(a) each Party shall use international standards, guidelines or recommendations as reference guideline for its sanitary and phytosanitary measures;

(b) each Party may adopt, implement, establish or maintain a sanitary or phytosanitary measure with a level of protection different from or stricter than that of international standards, guidelines or recommendations, provided that there is scientific justification for the measure;

(c) with the aim of reaching a higher degree of harmonization, each Party shall follow the guidelines of the ASPS, the IPPC for plant health, the OIE for animal health and the Codex on food safety and tolerance limits; and

(d) the Parties shall establish harmonized systems for the procedures of control, inspection and approval of the sanitary and phytosanitary measures for animals, plants, their products and by-products as well as food safety.

Article 8.06. Equivalence

With the aim of implementing the sanitary and phytosanitary measures in the territory of the Parties, the Parties shall implement control, inspection and approval procedures according to the following principles:

(a) the Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent, even if these measures differ from its own in the same product, if the other Party objectively demonstrates to the Party that its measures, based on

scientific information and risk assessment, achieve the Party's appropriate level of sanitary or phytosanitary protection. The other Party shall give reasonable access upon request to the Party for information related to its inspection, testing and other relevant procedures; and

(b) The Parties shall facilitate access to their territories with respect to inspection, testing and other relevant procedures in order to establish equivalence between their sanitary and phytosanitary measures.

Article 8.07. Assessment of Risk and Determination of the Appropriate Level of Sanitary and Phytosanitary Protection

According to the guidelines developed by relevant international organizations:

(a) the Parties shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the existing risk to the protection of human life and health (food safety) and animal health, or to protect plant health taking into account the guidelines and risk assessment techniques developed by relevant international organizations;

(b) the Parties shall provide necessary access for assessing sanitary and phytosanitary services through the procedures in force for verification of control, inspections, approval procedures, measure implementation and programs on sanitary and phytosanitary matters, on the basis of the guidelines and recommendations of the international organizations recognized by the WTO;

(c) in assessing the risk of a commodity and in establishing the appropriate level of protection, the Parties shall take into account the following factors:

(i) available scientific and technical information,

(ii) existence of pests or diseases,

(iii) pest and disease epidemiology,

(iv) analysis of critical control points to the sanitary (food safety) and phytosanitary aspects,

(v) the physical, chemical and biological hazards in foods,

(vi) relevant ecological and environmental conditions ,

(vii) productionprocessesandmethods,andtheinspection,samplingand testing methods,

(viii) structure and organization of sanitary and phytosanitary services,

(ix) procedures for protection, epidemiological supervision, diagnostics and treatment to ensure food safety,

(x) loss of production or sales in the event of the entry, establishment, spread or dissemination of a pest or disease,

(xi) applicable quarantine measures and treatments that shall satisfy the importing Party on risk mitigation, and

(xii) costs of controlling or eradicating pests or diseases in the territory of the importing Party and relative cost-effectiveness of other possible methods to reduce the risk;

(d) for the purpose of establishing and harmonizing the appropriate level of protection, the Parties shall avoid arbitrary or unjustifiable distinctions that may result in discrimination or disguised restriction to trade;

(e) where relevant scientific evidence is insufficient for carrying out risk assessment, the Party may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations described in this Chapter. In such circumstances, the Parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable time frame, and with this aim the following procedures shall be applied:

(i) the importing Party that applies the provisional measure shall request to the other Party, within thirty (30) days of the adoption of the provisional measure, necessary technical information to complete the risk assessment, and the other Party shall provide the information. If the information is not provided, the provisional measure shall be sustained, and if on expiration of this period the information has not been requested, the provisional measure shall be withdrawn,

(ii) if the importing Party has requested the information, there shall be a period of sixty (60) days from the date of provision

of this information to revise, withdraw or keep as final the provisional measure. If necessary, the Party can extend the period of time,

(iii) the importing Party may request clarification about the information provided b y the exporting Party after its receipt,

(iv) the importing Party shall allow the exporting Party to present its comments and shall take them into account for its conclusion of the risk assessment, and

(v) the adoption or revision of the sanitary or phytosanitary measure shall be immediately notified to the other Party through the notification authorities established under the ASPS;

(f) if the result of the risk assessment implies non-acceptance of the importation, the scientific basis for the decision shall be notified in writing; and

(g) when a Party has reasons to believe that a sanitary or phytosanitary measure established or maintained by the other Party restricts or may restrict its exports and that the measure is not based on relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, the Party may demand an explanation for the reasons of the sanitary and phytosanitary measures and the Party maintaining these measures shall provide the explanation within sixty (60) days from the date of receipt of the inquiry by the competent authority.

Article 8.08. Recognition of Pest- or Disease- Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall recognize the pest- or disease- free areas and the areas of low pest or disease prevalence according to international standards, guidelines or recommendations, taking into account geographical situation, ecosystems, epidemiological surveillance and the effecti veness of sanitary and phytosanitary controls in the area.

2. The Party claiming that an area within its territory is free from a specific pest or disease, shall demonstrate objectively to the importing Party this condition and ensure that it will be maintained as such, on the basis of the protection measures implemented by those in charge of the sanitary and phytosanitary services.

3. The Party interested in obtaining recognition that an area is free from a specific pest or disease shall send the request to the other Party and provide relevant scientific and technical information.

4. The Party that receives the request for recognition may carry out inspections, testing and other verification procedures. If the Party does not accept the request, it shall indicate in writing the technical basis for its decision.

5. The Parties may initiate consultation in order to reach agreement on specific requirements for recognition of pest or disease free areas or areas of low pest or disease prevalence. In view of lack of international standards for the recognition of areas of low pest or disease prevalence, it is agreed by both Parties that the recognition of such areas shall be pending until the establishment of the international standards.

Article 8.09. Control, Inspection and Approval Procedures

1. The Parties, according to this Chapter, shall observe the provisions of Annex C to the ASPS on control, inspection and approval procedures, including approval of the use of additives or establishment of tolerances for contaminants in food, beverages and feedstuffs.

2. When the competent authority of the exporting Party requests for the first time to the competent authority of the importing Party to inspect a production unit or production process in its territory, the competent authority of the importing Party shall, upon completion of review and evaluation of necessary documents and information and risk assessment required by the importing Party, carry out the inspection within a period of 100 days. This period can be extended by mutual agreement between the Parties in those cases where they can be justified, for example for reasons relating to the seasonality of a product. When the inspection is completed, the competent authority of the importing Party shall issue a decision based on the results of the inspection and shall notify the exporting Party within ninety (90) days after the inspection.

Article 8.10. Transparency

1. Each Party, when proposing adoption or modification of a sanitary or phytosanitary measure of general application in the central level, shall notify the following:

(a) adoptions and modifications of these measures. It shall also provide information on measures according to the provisions of Annex B to the ASPS, and shall implement the relevant adjustment;

(b) changes or revisions in sanitary or phytosanitary measures that have a significant effect on trade between the Parties, within sixty (60) days prior to the entry into force of the new provision, to allow the other Party to comment; such requirement shall be exempted for emergencies, according to the provisions of Annex B to the ASPS;

(c) changes in the status of animal health, as the occurrence of exotic diseases and diseases in List A of the OIE, within twenty four (24) hours after confirming the disease;

(d) changes in the phytosanitary status, as the occurrence of quarantine pests and diseases or spread of quarantine pests and diseases under official control, within seventy two (72) hours of their verification; and

(e) disease outbreaks which are scientifically shown to be caused by the consumption of imported food and food products, natural or processed.

2. The Parties shall use the notification authorities and enquiry points established under the ASPS as communication channels. When emergency measures are needed, the Party shall immediately notify the other Party in writing, indicating briefly the aims and basis of the measure, and the nature of the problem.

3. According to the provisions of Article 17.02 (Information Center), each Party shall answer any reasonable request for information from the other Party and shall provide relevant documentation according to the principles of paragraph 3 of the Annex B to the ASPS.

Article 8.11. Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish the Committee on Sanitary and Phytosanitary Measures, as set out in Annex 8.11.

2. The Committee shall hear matters relating to this Chapter and, without prejudice to Article 18.05(2) (Committees), shall carry out the following functions:

(a) promoting the means necessary for the training and specialization of technical staffs;

(b) promoting the active participation of the Parties in international bodies; and

(c) creating and updating a database of specialists qualified in the fields of food safety, plant and animal health, for the purpose of the provisions of Article 18.07 (Expert Groups).

Article 8.12. Technical Cooperation

Each Party may provide the other Party with advice, information and technical cooperation, on mutually agreed terms and conditions to strengthen its sanitary and phytosanitary measures, as well as activities, processes and systems on this matter.

Chapter 9. MEASURES ON STANDARDS, METROLOGY AND AUTHORIZATION PROCEDURES

Article 9.01. Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

administrative refusal: action taken in the exercise of its authorities by a public body of the importing Party to prevent the entry in its territory of a consignment that does not comply with its technical regulations, conformity assessment procedures or metrological requirements;

assessment of risk: evaluation of potential adverse effects on legitimate objectives that could impede trade;

authorization procedure: any mandatory administrative procedure for granting registration, license or any other approval for a good to be produced, marketed or used for a stated purpose or under stated conditions;

comparable situation: situation that offers the same level of safety or protection for reaching a legitimate objective;

conformity assessment procedure: any procedure used, directly or indirectly, to determine that a technical regulation or

standard is fulfilled, including sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation and approval as well as their combinations;

international standard: a standard, guide or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing or metrological body: a standardizing or metrological body whose membership is open to at least all the Members of the WTO, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission (CAC), the International Organization of Legal Metrology (OIML), the International Commission on Radiation Units and Measurements, Inc. (ICRU), or any other body that the Parties designate;

legitimate objectives: national security requirements, prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment;

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

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

standardization measures: the rules, technical regulations or procedures for conformity assessment;

TBT Agreement: The Agreement on Technical Barriers to Trade, that forms a part of World Trade Organization (WTO);and

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

2. Except as defined in paragraph 1, the Parties shall use the terms of the current ISO/IEC Guide 2:1996 “Standardization and Related Activities-General Vocabulary.”

Article 9.02. General Provisions

In addition to the provisions of the WTO Agreement, the Parties shall apply the provisions of this Chapter.

Article 9.03. Scope and Coverage

1. This Chapter shall apply to the measures adopted by the Parties on standards, authorization procedures and metrology, as well as on related measures that may directly or indirectly affect the trade in goods between the Parties.

2. This Chapter shall not apply to sanitary and phytosanitary measures.

Article 9.04. Basic Rights and Obligations

Right to Adopt Standardization Measures

1. Each Party may develop, adopt, apply and maintain:

(a) measures on standards, authorization procedures and metrology, according to the provisions of this Chapter; and

(b) technical regulations and conformity assessment procedures that allow the Party to reach its legitimate objectives.

Unnecessary Barriers

2. No Party shall develop, adopt, maintain or apply measures on standards, authorization procedures or metrology that have the purpose or effect of creating unnecessary barriers to trade with the other Party.

Non-Discriminatory Treatment

3. Each Party shall, in relation to measures on standardization, authorization procedures and metrology, accord to the goods of the other Party national treatment and treatment no less favourable than that it accords to like goods of any other country.

Use of International Standards

4. In the development or implementation of its measures on standardization, authorization procedures or metrology, each Party shall use international standards where they exist or their completion is imminent, or use the relevant parts of them, except where such international standards would not be an effective or appropriate means for fulfilling the legitimate objectives because of fundamental climatic, geographical, technological or infrastructural factors, or scientifically verified reasons.

Article 9.05. Assessment of Risk

1. In pursuing its legitimate objectives, each Party conducting risk assessments shall take into account:

(a) risk assessments carried out by international standardizing or metrological bodies;

(b) available scientific evidence or technical information;

(c) related processing technology; or

(d) intended end uses of goods.

2. Where a Party establishes a level of protection that it considers appropriate and conducts an assessment of risk, it shall avoid arbitrary or unjustifiable distinctions between similar goods in the level of protection it considers appropriate, where the distinctions:

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

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

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

3. A Party shall provide to the other Party, upon request, relevant documentation on its risk assessment processes and on the factors taken into account when conducting the assessment and definition of protection levels, according to Article 9.04.

Article 9.06. Compatibility and Equivalence

1. Without prejudice to the rights conferred by this Chapter and taking into account the international activities on standards and metrology, the Parties shall to the greatest extent practical make compatible their respective standards and metrology measures, without reducing the level of safety or protection to human, animal or plant life or health, the environment and consumers.

2. A Party shall accept as equivalent to its own any technical regulations of the other Party, when in cooperation with the other Party, the importing Party determines that the technical regulations of the exporting Party adequately fulfill the legitimate objectives of the importing Party.

3. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 2.

Article 9.07. Conformity Assessment

1. Each Party shall develop, adopt and apply conformity assessment procedures to accord access to like goods from the territory of the other Party under conditions no less favourable than those accorded to its like goods or to those of any other country, in a comparable situation.

2. With regard to its conformity assessment procedures, each Party shall:

(a) initiate and complete these procedures as expeditiously as possible and on a non-discriminatory basis;

(b) publish the procedure and the normal period of each procedure or, upon request, to convey this information to the applicant;

(c) have the competent body or authority review without delay upon receipt of an application if the documentation is complete and communicate to the applicant as soon as possible and with accuracy and thoroughness the findings of the assessment, so that the applicant may take corrective measures as needed, and even when the application shows deficiencies, proceed with the conformity assessment as far as possible if requested by the applicant and, upon request, inform the applicant of the stage of the procedure and explain any possible delay;

(d) request only the information necessary to assess the conformity and calculate the fees;

(e) respect the confidentiality of the information about a good of the other Party obtained by such procedures or provided in connection with them, in the same manner as in the case of goods from the Party, so as to protect the legitimate trade interests;

(f) make equitable the fees imposed for assessing the conformity of a good of the other Party, compared with the fees that would be collected for assessing the conformity of a like good of this Party, taking into account communication, transportation and other costs due to differences in location of the applicant's premises and of the conformity assessment body;

(g) ensure that the location of premises used in conformity assessment procedures and sampling procedures do not cause unnecessary inconvenience to applicants or their agents;

(h) if the specifications of a good are modified after the determination of its conformity with technical regulations or applicable standards, limit the conformity assessment procedure for the modified good to the extent necessary to determine with due assurance that the good shall continue to conform to the technical regulations or applicable standards; and

(i) establish a procedure for reviewing the claims related to the application of a conformity assessment procedure and adopt corrective measures if the claim is justified.

3. With the aim of advancing the facilitation of trade, a Party shall consider favourably a request from the other Party to initiate negotiations designed to conclude agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. To the extent practicable each Party shall accept the results of conformity assessment procedures carried out in the territory of the other Party, provided that those procedures offer enough confidence, equivalent to the confidence of its own procedures and that the good meets the technical regulations or applicable standards adopted or maintained in the territory of this Party.

5. Before accepting the results of a conformity assessment procedure under paragraph 4 and with the aim of strengthening the sustained reliability of the results of conformity assessment of each Party, the Parties may consult about matters such as the technical capacity of conformity assessment bodies, including the verified compliance with relevant international standards through means such as accreditation.

6. Each Party, recognizing that the outcome shall be to the mutual advantage of both Parties, shall accredit, approve or recognize conformity assessment bodies in the territory of the other Party, in conditions no less favourable than those accorded to conformity assessment bodies in its territory.

7. The Parties may use the capacity and technical infrastructure of the accredited bodies established in the territory of the Parties in the conformity assessment procedures.

Article 9.08. Authorization Procedures

1. Each Party shall develop, adopt and apply authorization procedures to accord access to like goods from the territory of the other Party under conditions no less favourable than that accorded to its goods or to the goods of any other country, in a comparable situation.

2. In relation to its authorization procedures, each Party shall:

(a) initiate and complete these procedures as expeditiously as possible and in a non-discriminatory manner;

(b) publish the procedure and the normal period of each procedure or upon request to convey this information to the applicant;

(c) have the competent authority review without delay upon receipt of an application if the documentation is complete and communicate to the applicant as soon as possible and with accuracy and thoroughness the results of the authorization, so

that the applicant may take corrective measures as needed, and even when the application shows deficiencies, proceed with the authorization procedure as far as possible if requested by the applicant and, upon request, inform the applicant of the stage of the procedure and explain any possible delay;

(d) request only the information necessary to authorize and calculate the fees;

(e) respect the confidentiality of the information about a good of the other Party obtained by such procedures or provided in connection with them, in the same manner as in the case of goods from the Party, in order to protect the legitimate trade interests;

(f) make equitable the fees imposed for authorization procedure with respect to a good of the other Party, compared with the fees that would be collected for an authorization procedure of a like good of this Party, taking into account communication, transportation and other costs due to differences in location of the applicant's premises and of the authorizing body; and

(g) establish a procedure for reviewing the claims related to the application of an authorization procedure and adopt corrective measures if the claim is justified.

Article 9.09. Metrology

Each Party shall ensure, to the extent practicable, the documented traceability of its standards and the calibration of its measuring instruments, according to the recommendations of the Bureau International des Poids et Mesures (BIPM) and the International Organization of Legal Metrology (OIML), comply with the requirements set out in this Chapter.

Article 9.10. Notification

1. In cases where there is no relevant international standard, or the technical content of a proposed technical regulation or of a conformity assessment procedure does not conform with the technical content of the relevant international standards, and if these technical regulations may have a significant impact on trade between the Parties, each Party shall notify in writing to the other Party the proposed measure, at least sixty (60) days before its adoption, allowing the interested parties to make comments, discuss these comments upon request, and take these comments and the results of these discussion into account.

2. If a Party faces serious problems or the threat of serious problems related to safety, health, environment protection and national security, this Party may not present the communication prior to the project, but once adopted shall notify the other Party.

3. The notifications under paragraphs 1 and 2 shall be done following the models established in the TBT Agreement.

4. Within thirty (30) days of entry into force of this Agreement, each Party shall notify the other Party of the institution designated to carry out the notifications under this Article.

5. Each Party shall notify in writing the other Party of its standardization plans and programmes.

6. Where a Party rejects a shipment by an administrative decision, the Party shall notify without delay and in writing the person in charge of the shipment of the technical reasons for the rejection.

7. Once the information required under paragraph 5 is completed the Party shall immediately transmit it to the Information Centre of the other Party.

Article 9.11. Information Centres

1. Each Party shall ensure the existence of an information centre in its territory that may answer all reasonable questions and requests from the other Party and from interested persons and supply the relevant updated documentation relating to any measure on standards, metrology, conformity assessment procedures or authorization procedures adopted or proposed in its territory by governmental or non-governmental bodies.

2. Each Party designates the centre set out in Annex 9.11(2) as Information Centre.

3. If an information centre requests copies of the documents referred to in paragraph 1 they shall be delivered without cost. The interested persons from the other Party shall receive copies of the documents at the same price as the nationals from this Party, plus the actual cost of shipment.

Article 9.12. Committee on Standards, Metrology and Authorization Procedures

1. The Parties hereby establish the Committee on Standards, Metrology and Authorization Procedures, as set out in Annex 9.12.

2. The Committee will hear matters relating to this Chapter, and without prejudice to the provisions of Article 18.05(2) (Committees) shall have the following functions:

(a) analyzing and proposing ways to resolve measures on standards, authorization procedures and metrology that a Party considers a technical barrier to trade;

(b) facilitating the process by which the Parties shall make compatible their measures on standards and metrology, giving priority, inter alia, to labelling and packaging;

(c) promoting technical cooperation activities between the Parties;

(d) providing assistance to the risk assessment activities carried out by the Parties;

(e) working together to develop and strengthen the standards and metrology measures of the Parties; and

(f) facilitating the process by which the Parties shall establish mutual recognition agreements.

Article 9.13. Technical Cooperation

1. Each Party shall promote the technical cooperation between their standards and metrology bodies, providing information or technical assistance to the extent possible and on mutually agreed terms, in order to assist the implementation of this Chapter and strengthen the activities, processes, systems and measures related to standards and metrology.

2. The Parties may make joint efforts to manage the activities of technical cooperation coming from non-Party countries.

Part FOUR. INVESTMENT, SERVICES AND RELATED MATTERS

Chapter 10. Investment

Section A. Investment

Article 10.01. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
(a) investors of the other Party with respect to all aspects of its investments;
(b) investments of investors of the other Party in the territory of the Party; and
(c) all investments of the investors of a Party in the territory of the other Party with regard to Article 10.07. 2.
This Chapter does not apply to:
(a) measures adopted or maintained by a Party in relation to financial services;
(b) measures adopted by a Party to limit the participation of investment of investors of the other Party in its territory for reasons of public order or national security;
(c) economic activities reserved by each Party pursuant to its law in force on the date of the signing of this Agreement, as listed in Annex III on economic activities reserved to each Party;
(d) government services or functions such as law enforcement, correctional services, income security or unemployment insurance, social security services, social welfare, public education, public training, health, and child care;
(e) disputes or claims arising before the entry into force of this Agreement or relating to facts that occurred before it entered into force, even if their effects persist thereafter; and
(f) government procurement.
3. This Chapter applies to the entire territory of the Parties and to any level of government regardless of any inconsistent measures that may exist in the law of these government levels.
4. Notwithstanding the provisions of paragraph 2(d), if a duly authorized investor from a Party provides services or carries out functions such as correctional services, income security or unemployment insurance, social security services, social welfare, public education, public training, health, and child care, the investment of this investor shall be protected by the provisions of this Chapter.

5. This Chapter shall apply to both investments made prior to and after the entry into force of this Agreement, by investors of a Party in the territory of the other Party.

Article 10.02. National Treatment

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

Article 10.03. Most-favored-nation Treatment

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

Article 10.04. Fair and Equitable Treatment

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

Article 10.05. Standard of Treatment

Each Party shall accord to investors of the other Party and to investments of investors of the other Party the better of the treatment required by Articles 10.02, 10.03 and 10.04.

Article 10.06. Compensation for Losses

Each Party shall accord the investors of the other Party whose investments have been adversely affected in its territory due to armed conflict, state of emergency, insurrection, or civil strife, non-discriminatory treatment on any measure adopted or maintained in relation to such losses.

Article 10.07. Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party in its territory:
(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory; or
(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment. This paragraph does not apply to any requirement other than indicated herein.
2. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party, on compliance with any of the following requirements:
(a) to achieve a given level or percentage of domestic content; (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory; or
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment. This paragraph does not apply to any requirements other than indicated herein.
3. The provisions included in:
(a) paragraph 1(a), (b), and (c) and paragraph 2(a) and (b) do not apply to requirements relating to the qualification of goods

and services for programs of export promotion and foreign aid programs;
(b) paragraph 1(b) and (c) and paragraph 2(a) and (b) do not apply to the procurement by a Party or by a state enterprise; and
(c) paragraph 2(a) and (b) does not apply to the requirements imposed by an importing Party related to the contents of a good necessary to qualify it for preferential tariffs or quotas.
4. 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 in its territory of an investor of the other Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
5. Provided that these measures are not applied in an arbitrary or unjustified manner or do not constitute a disguised restriction to international trade or investment, nothing in paragraph 1(b) or (c) or 2(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environment measures, necessary to:
(a) ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
(b) protect human, animal or plant life or health; or
(c) conserve living or non-living exhaustible natural resources.
6. In the case where, in opinion of a Party, the imposition by the other Party of any of the following requirements shall adversely affect trade flows or constitutes a significant barrier to investment by an investor of a Party, the matter shall be considered by the Commission:
(a) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
(b) to transfer technology, production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or
(c) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.
7. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 6(b). For greater certainty, Articles 10.02 and 10.03 apply to the measure.
8. If the Commission finds that the imposition of any of the above requirements adversely affects the trade flow, or represents a significant barrier to investment by an investor of the other Party, it shall recommend that the practice in question be suspended.

Article 10.08. Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality. 2. A Party may require that a majority of the board of directors, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.09. Reservations and Exceptions

1. Articles 10.02, 10.03, 10.07 and 10.08 do not apply to:
(a) any existing non-conforming measure that is maintained by: (i) a Party at the national level, as set out in its Schedule to Annex I or III, or
(ii) a local or municipal government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) the amendment of any non-conforming measure referred to in subparagraph (a), provided that this amendment does not decrease the conformity of the measure as it existed before its amendment by Articles 10.02, 10.03, 10.07, and 10.08.
2. Articles 10.02, 10.03, 10.07 and 10.08 shall not apply to any measure adopted or maintained by a Party in relation to sectors, sub-sectors or activities, as are indicated in their Schedule to Annex II.
3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Article 10.03 does not apply to treatment accorded by a Party under agreements, or with respect to sectors included in its Schedule to Annex IV.
5. Articles 10.02, 10.03 and 10.08 do not apply to: (a) procurement by a Party or a state enterprise; and (b) subsidies or grants provided by a Party or a state enterprise, including government supported loans, guarantees and insurance.

Article 10.10. Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:
(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
(d) payments made pursuant to Article 10.11; and
(e) payments arising from the mechanism of dispute settlement under section B of this Chapter.
2. Each Party shall permit transfers to be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.
3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.
4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
(a) bankruptcy, insolvency or the protection of the rights of creditors;
(b) criminal or penal offenses;
(c) reports of transfers of currency or other monetary instruments;
(d) ensuring the satisfaction of judgments and arbitral awards in adjudicatory proceedings; or
(e) issuing, trading or dealing in securities. 5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

Article 10.11. Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
(a) for a public purpose, or public order and social interest;
(b) on a non-discriminatory basis;
(c) in accordance with due process of law; and (d) on payment of compensation in accordance with this Article.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.
4. The amount paid as compensation shall be no less than the equivalent amount that would have been paid on that date to the expropriated investor in a currency of free convertibility in the international financial market according to the exchange rate in force on the date in which the fair market price was determined. The compensation shall include the payment of interests computed from the day of dispossession of the expropriated investment until the day of payment, and shall be computed on the basis of a commercially applicable rate for this currency set by the national bank system of the Party where the expropriation occurred.
5. Upon payment, the compensation shall be freely transferable according to Article 10.10.
6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with TRIPS.
7. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

Article 10.12. Special Formalities and Information Requirements

1. Nothing in Article 10.02 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.
2. Notwithstanding Articles 10.02 and 10.03, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The

Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.13. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the latter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provisions of that of cross border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 10.14. Denial of Benefits

Upon notification and consultation done according to Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits under this Chapter to an investor of the other Party that is an enterprise of such other Party and to the investment of this investor, if investors of a non Party are owners of or control the enterprise under the terms set out in the definition "investment" of an investor of a Party according to Article 10.39 and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.15. Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken under its ecological or environmental laws.
2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party.

Section B. Settlement of Disputes between a Party and an Investor of the other Party

Article 10.16. Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes arising from the violation of obligations established under Section A of this Chapter that assures both equal treatment among investors of the Parties in accordance with the principle of reciprocity and due process before an impartial tribunal.

Article 10.17. Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim on the grounds that the other Party or an enterprise controlled directly or indirectly by the other Party, has breached an obligation under this Chapter if the investor has suffered losses or damages from the violation of this Chapter.
2. An investor may not make a claim if more than 3 years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has suffered losses or damages.

Article 10.18. Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party or an enterprise controlled directly or indirectly by that Party has breached an obligation under this Chapter, whenever the enterprise has suffered losses or damages due to that violation or arising therefrom.
2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and

knowledge that the enterprise has suffered losses or damages.
3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.17 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.21, the claims should be heard together by a Tribunal established under Article 10.27, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.
4. An investment may not submit a claim to arbitration under this Section.

Article 10.19. Settlement of a Claim Through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 10.20. Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least ninety (90) days before the claim is submitted, which notice shall specify:
(a) the name and address of the disputing investor and, where a claim is made under Article 10.18, the name and address and the type of business of the enterprise;
(b) the provisions of this Chapter alleged to have been breached and any other relevant provisions;
(c) the issues and the factual basis for the claim; and
(d) the relief sought and the approximate amount of damages claimed.

Article 10.21. Submission of a Claim to Arbitration

1. Provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:
(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
(b) the Additional Facility Rules of ICSID , provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention;
(c) the UNCITRAL Arbitration Rules; or
(d) the ICC Arbitration Rules.
2. The applicable arbitration rules shall govern the arbitration established in this Chapter except to the extent modified by this Section.

Article 10.22. Conditions Precedent to Submission of a Claim to Arbitration

1. Consent of the disputing parties in the arbitration procedure according to this Chapter shall be considered as a consent to this arbitration that excludes any other procedure.
2. Each Party may demand the exhaustion of its local administrative remedies as a condition for consenting to the arbitration under this Chapter. Nevertheless, if 6 months have elapsed from the date on which the administrative remedies were lodged and the administrative authorities have not issued a final resolution, the investor may directly appeal to arbitration, according to the provisions of this Section.
3. A disputing investor may submit a claim under Article 10.17 to arbitration only if:
(a) the investor consents to arbitration in accordance with the procedures set out in this Section; and
(b) the investor and, where the claim is for losses or damages to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.17, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
4. A disputing investor may present a claim to the arbitration procedure according to Article 10.18 only if both investor and enterprise:
(a) consent to submit the claim to arbitration in accordance with the procedures set out in this Section; and
(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.18, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
5. The consent and the waiver required by this Article shall be stated in writing, delivered to the disputing Party and included in the submission of the claim to arbitration.
6. The waiver by the enterprise, under paragraphs 3(b) and 4(b), shall not be required if, and only if, the disputing Party had

deprived the disputing investor of the control of an enterprise.

Article 10.23. Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures and requirements set out in this Section.
2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall be deemed as having satisfied the requirement of:
(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and
(b) Article II of the New York Convention for an agreement in writing.

Article 10.24. Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 10.27, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator of the Tribunal, appointed by agreement of the disputing parties.

Article 10.25. Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. In the event a disputing party does not appoint an arbitrator or an agreement is not reached about the appointment of the presiding arbitrator of the Tribunal, the arbitrator or the presiding arbitrator of the Tribunal in the arbitration proceeding shall be designated, according to this Section.
2. Where a Tribunal, not being the one created according to Article 10.27, is not constituted within a period of ninety (90) days from the date on which the claim is submitted to arbitration, the Secretary-General of the ICSID, the Secretary-General of the ICC or an appropriate official at an international organization agreed upon by the disputing parties (hereinafter the Secretary-General), shall appoint the not yet appointed arbitrator or arbitrators, except for the presiding arbitrator of the Tribunal who shall be appointed according to paragraph 3. In any case, the majority of arbitrators may not be nationals of the disputing Party or the Party of the disputing investor.
3. The Secretary-General shall appoint the presiding arbitrator of the Tribunal from the roster of arbitrators referred to in paragraph 4, ensuring that the presiding arbitrator of the Tribunal is not a national of the disputing Party or a national of the Party of the disputing investor. In case of not finding in the roster an available arbitrator to head the Tribunal, the Secretary-General shall appoint from the roster of arbitrators of the ICSID the presiding arbitrator of the Tribunal, provided that he or she is of a nationality different from the disputing Party or from the Party of the disputing investor.
4. On the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of six (6) arbitrators as possible presiding arbitrators of the Tribunal, none of which may be national of a Party, who comply with the rules contemplated in Article 10.21 and have experience in International Law and in investment matters. The members of the roster shall be appointed by mutual agreement, regardless of nationality, for a period of two (2) years that may be extended if the Parties so decide. In case of death or resignation of one member of the roster, the Parties shall appoint by mutual agreement the other person to substitute him or her in its functions for the remaining period to which the former person was appointed.

Article 10.26. Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.25(3) or on a ground other than nationality:
(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
(b) a disputing investor referred to in Article 10.17 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and
(c) a disputing investor referred to in Article 10.18(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 10.27. Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.
2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 10.21 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
(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.
3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:
(a) the name of the disputing Party or disputing investors against which the order is sought; (b) the nature of the order sought; and (c) the grounds on which the order is sought.
4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.
5. Within sixty (60) days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 10.25(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. The Secretary-General shall appoint the two other members from the roster referred to in Article 10.25(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.
6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.17 or 10.18 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request: (a) the name, address and the type of business of the enterprise of the disputing investor; (b) the nature of the order sought; and (c) the grounds on which the order is sought.
7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.
8. A Tribunal established under Article 10.21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.
9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.21 be stayed, unless the latter Tribunal has already adjourned its proceedings, until there is a decision about the propriety of consolidation.
10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:
(a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention; (b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules;
(c) a notice of arbitration given under the UNCITRAL Arbitration Rules; or (d) a request for arbitration made under ICC Arbitration Rules.
11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:
(a) within fifteen (15) days of receipt of the request, in the case of a request made by a disputing investor; or
(b) within fifteen (15) days of making the request, in the case of a request made by the disputing Party. 12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within fifteen (15) days of receipt of the request.
13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.

Article 10.28. Notice

A disputing Party shall deliver to the other Party:
(a) written notice of a claim that has been submitted to arbitration no later than thirty (30) days after the date that the claim is submitted; and
(b) copies of all pleadings filed in the arbitration.

Article 10.29. Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 10.30. Documents

1. A Party shall be entitled, at its own cost, to receive from the disputing Party a copy of:
(a) the evidence that has been tendered to the Tribunal according to this Section; and (b) the written argument of the disputing parties.
2. A Party receiving information pursuant to paragraph 1 shall treat the confidential information as if it were a disputing Party.

Article 10.31. Venue of Arbitration

Unless the disputing parties agree otherwise, a Tribunal established under this Section shall hold an arbitration in the territory of a party to the New York Convention, selected in accordance with:
(a) the ICSID Additional Facility Rules if the arbitration is under those Rules, or the ICSID Convention;
(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules; or
(c) the ICC Arbitration Rules if the arbitration is under those Rules.

Article 10.32. Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 10.33. Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in those Annexes, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within sixty (60) days of delivery of the request, shall submit in writing its interpretation to the Tribunal.
2. Further to Article 10.32(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal established under this Section. If the Commission fails to submit an interpretation within sixty (60) days, the Tribunal shall decide the issue.

Article 10.34. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning the controversy.

Article 10.35. Interim Measures of Protection

A Tribunal established under this Section may request, or the disputing parties may petition to, in accordance with domestic legislation, national courts for imposing 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. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.17 or 10.18.

Article 10.36. Final Award

1. Where a Tribunal established under this Section makes a final award against a Party, the Tribunal may award, only:
(a) monetary damages and any applicable interest; or
(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs in accordance with the applicable arbitration rules.
2. Subject to paragraph 1, where a claim is made under Article 10.18(1):
(a) an award of restitution of property shall provide that restitution be made to the enterprise; or
(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise.
3. The award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

Article 10.37. Finality and Enforcement of an Award

1. An award made by a Tribunal established under this Section shall have no binding force except between the disputing parties and in respect of the particular case.
2. Subject to paragraph 3 and the applicable review procedure for an award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
(a) in the case of a final award made under the ICSID Convention:
(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or
(ii) explanation, revision or annulment proceedings have been completed; and
(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
(i) ninety (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.
4. Each Party shall provide for the enforcement of an award in its territory.
5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 19.09 (Request for an Arbitral Group). The requesting Party may seek in such proceedings:
(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
(b) a recommendation that the Party abide by or comply with the final award.
6. A disputing investor may seek enforcement of an arbitration award under the New York Convention, or the ICSID Convention, regardless of whether proceedings have been taken under paragraph 5.
7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 10.38. General Provision

Time when a Claim is Submitted to Arbitration
1. A claim is submitted to arbitration under this Section when:
(a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General;
(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General;
(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party; or (d) the request for arbitration under Article 4 of the ICC Arbitration Rules has been received by the Secretariat. Delivery of Notifications and Other Documents
2. Delivery of notifications and other documents on a Party shall be made to the place named for that Party in Annex 10.38(2). Receipts under Insurance or Guarantee Contracts
3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.
Publication of an Award
4. The awards shall be published only if there is an agreement in writing by the disputing parties.

Section C. Definitions

Article 10.39. Definitions

For purposes of this Chapter, the following terms shall be understood as:
Additional Facility Rules of ICSID: Additional Facility Rules of ICSID established in 1978;
claim: the claim made by the disputing investor against a Party under Section B of this Chapter;
disputing investor: an investor that makes a claim under Section B of this Chapter;
disputing parties: the disputing investor and the disputing Party;
disputing Party: a Party against which a claim is made under Section B of this Chapter;
disputing party: the disputing investor or the disputing Party;
enterprise: an "enterprise" as defined in Chapter 2 (General Definitions), and a branch of an enterprise;
enterprise of a Party: an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;
ICC: the International Chamber of Commerce;

ICSID: the International Centre for Settlement of Investment Disputes;
ICSID Convention: the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;
investment: any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or other business objective, acquired with resources transferred or reinvested by an investor, and including:
(a) an enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:
(i) the enterprise is an affiliate of the investor, or
(ii) the date of maturity of the debt instrument or loan is at least 3 years,
(b) a stake in an enterprise that grants to the owner the right to participate in the assets of this enterprise in a liquidation, provided that they do not arise from a debt instrument or a loan excluded under subparagraph (a);
(c) real estate or other properties, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights), acquired with the expectation of or used with the purpose of obtaining an economic benefit or other business objectives;
(d) share or benefits arising from the allocation of capital or other resources to the developing of an economic activity in the territory of a Party according, inter alia; to:
(i) contracts that involve the presence of the property of an investor in the territory of a Party, including concessions and construction and turnkey contracts, or
(ii) contracts where remuneration substantially depends on the production, income or profits of an enterprise, but investment does not include:
(e) a payment obligation or a credit granted to the State or a state enterprise,
(f) monetary claims exclusively derived from:
(i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of the other Party, or
(ii) a credit granted in relation to a commercial transaction, of which expiration date is less than 3 years, such as trade financing, except a loan covered by the provisions of subparagraph (a); or
(g) any other monetary claim that does not involve the kinds of interests as set out in subparagraphs (a) through (d);
investor of a Party: a Party or a state enterprise of a Party or a national or an enterprise of a Party that makes or has made an investment in the territory of the other Party;
New York Convention: the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;
Secretary-General: the Secretary-General of the ICSID, or the ICC;
transfers: remittance and international payments; Tribunal: an arbitration tribunal established under Article 10.21,and Article 10.27; and
UNCITRAL Arbitration Rules: the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

ANNEX 10.38(2). DELIVERY OF NOTIFICATIONS AND OTHER DOCUMENTS

1. For purposes of the Article 10.38(2), the place for the delivery of notifications and other documents will be:

(a) in the case of Panama:

Ministry of Trade and Industries

Vice-ministry of Foreign Trade

Vía Ricardo J. Alfaro, Plaza Edison, Piso #3 Panamá, República de Panamá

(b) in the case of the ROC:
Ministry of Economic Affairs No.15 Fu-Chou Street, Taipei Taiwan

The Republic of China

2. The Parties shall communicate any change of the designated place for the delivery of notifications and other documents.

Chapter 11. CROSS-BORDER TRADE IN SERVICES

Article 11.1. Definitions

For purposes of this Chapter, the following terms shall be understood as:

cross-border provision of a service or cross-border trade in services: the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to the services consumer of the other Party; or

(c) by a service provider of a Party, through presence of natural persons of a Party in the territory of the other Party, but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 10.39 (Definitions), in that territory;

enterprise: an "enterprise" as defined in Chapter 2 (General Definitions);

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

quantitative restriction: a non-discriminatory measure that imposes limitations on:

(a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

services provided in the performing of government functions: any cross-border service provided by a public institution in non-commercial conditions and without competing with one or more service providers; and.

service provider of a Party: a person of a Party that provides or seeks to provide a cross-border service.

Article 11.02. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures respecting:

(a) the production, distribution, marketing, sale and delivery of a service;

(b) the purchase or use of, or payment for, a cross-border service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a cross-border service;

(d) the access to networks and public services of telecommunication and its use;

(e) the presence in its territory of a cross-border service provider of the other Party; and

(f) the provision of a bond or other form of financial security as a condition for the provision of a cross-border service.

2. For purposes of this Chapter, it shall be understood that the measures adopted or maintained by a Party include measures adopted or maintained by non-governmental institutions or bodies in the performance of regulatory, administrative or other functions of a governmental nature delegated to them by the Party.

3. This Chapter does not apply to:

(a) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance;

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service,

(ii) the selling and marketing of air transport services, and

(iii) computer reservation system (CRS) services;
(c) government services or functions such as law enforcement, correctional services, income security or unemployment insurance or social security services, social welfare, public education, public training, health, and child care;
(d) cross-border financial services; and

(e) government procurement done by a Party or state enterprise.

4. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment.

Article 11.03. National Treatment

1. Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service providers.

2. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 11.04 . Most-Favored-Nation Treatment

Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service providers of any non-Party.

Article 11.05. Standard of Treatment

Each Party shall accord to cross-border services and service providers of the other Party the better of the treatment required by Articles 11.03 and 11.04.

Article 11.06. Local Presence

No Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 11.07. Permission, Authorization, Licensing and Certification

With a view to ensuring that any measure adopted or maintained by a Party relating to the permission, authorization, licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade, each Party shall endeavor to ensure that any such measure:

(a) is based on objective and transparent criteria, such as competence and the ability to provide a cross-border service;

(b)is not more burdensome than necessary to ensure the quality of a cross- border service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

Article 11.08. Reservations

1. Articles 11.03,11.04 and 11.06 do not apply to:

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

(i) a Party at the national level, as set out in its Schedule to Annex I,

(ii) a local or municipal government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.03,11.04 and 11.06.

2. Articles 11.03, 11.04 and 11.06 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

Article 11.09. Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains.

2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule as referred to in paragraph 1.

3. Regularly, at least every 2 years, the Parties shall endeavour to negotiate with the aim of liberalizing or eliminating:
(a) existing quantitati ve restrictions maintained by a Party, according to the list referred to in paragraph 1; or

(b) quantitative restrictions adopted by a Party after the entry into force of this Agreement.

Article 11.10. Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party decides, according to its effective law that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party having no substantial business activities in the territory of the other Party.

Article 11.11. Future Liberalization

The Parties, through future negotiations to be convened by the Commission, shall deepen the liberalization reached in different service sectors, with the aim of eliminating the remaining restrictions listed under Article 11.08(1) and (2).

Article 11.12. Procedures

The Parties shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule

(i) amendments of measures referred to in Article 11.08(1) and (2), and

(ii) quantitative restrictions in accordance with Article 11.09; and

(b) consultations on reservations or quantitative restrictions for further liberalization, if any.

Article 11.13. Disclosure of Confidential Information

No provision in this Chapter may be construed as imposing on the Parties the obligation to provide confidential information of which the disclosure may be an obstacle to the observance of laws or otherwise be damaging to the public interest, or that may injure legitimate trade interests of state and private enterprises.

Article 11.14. Committee on Investment and Cross-border Trade In Services

1. The Parties hereby establish the Committee on Investment and Cross-border Trade in Services, as set out in Annex 11.14.

2. The Committee shall hear matters relating to this Chapter and Chapter 10 (Investment) and, without prejudice to the provisions of Article 18.05(2)(Committees), shall have the following functions:

(a) supervising the implementation and administration of Chapters 10 (Investment) and 11 (Cross-border Trade in Services);

(b) discussing matters relating to investment and cross-border trade in services presented by a Party;

(c) analyzing matters that are discussed in other international fora;

(d) facilitating the exchange of information between the Parties and cooperating in giving advice on investment and cross-border trade in services; and

(e) establishing working groups or convening panels of experts on matters of interest to the Parties.

3. The Committee shall meet when necessary or at any other time at the request of either Party. Representatives of other institutions may also take part in its meetings if the relevant authorities deem it appropriate.

Chapter 12. FINANCIAL SERVICES

Article 12.01. Definitions

For purposes of this Chapter, the following terms shall be understood as:

cross-border provision of financial services or cross-border trade of financial services: the provision of a financial service:

(a) from the territory of a Party to the territory of the other Party;

(b) in the territory of a Party to a consumer of services of the other Party; or

(c) by a service provider of a Party through the presence of natural persons of a Party in the territory of the other Party;

disputing investor: an investor that submits to arbitration a claim under Article 12.19 and Section B of Chapter 10 (Investment);

enterprise: "enterprise" defined in Chapter 2 (General Definitions);

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

financial institution of the other Party: a financial institution, including a branch, established under the existing law located in the territory of a Party that is owned or controlled by persons of the other Party;

financial service: a service of a financial nature, including bank, insurance, reinsurance, securities, futures, and a service related or auxiliary to a service of a financial nature;

investment: any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or other business objective, acquired with resources transferred or reinvested by an investor, and including:

(a) an enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:

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

(ii) the date of maturity of the debt instrument or loan is at least 3 years;

(b) a stake in an enterprise that grants to the owner the right to participate in the assets of this enterprise in a liquidation, provided that they do not arise from a debt instrument or a loan excluded under subparagraph (a);

(c) real estate or other properties, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights), acquired with the expectation of or used with the purpose of obtaining an economic benefit or other business objectives;

(d) share or benefits arising from the allocation of capital or other resources to the developing of an economic activity in the territory of a Party according, inter alia, to:

(i) contracts that involve the presence of the propriety of an investor in the territory of a Party, including concessions and construction and turnkey contracts, or

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

(e) a loan granted by a provider of cross-border financial services or a debt instrument owned by the provider, except a loan to a financial institution or a debt instrument issued by it,
but investment does not include:

(f) a payment obligation or a credit granted by the State or a state enterprise;
(g) monetary claims exclusively derived from:

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

(ii) a credit granted in relation to a commercial transaction, of which expiration date is less than 3 years, such as trade

financing, except a loan covered by the provisions of subparagraph (a);

(h) any other monetary claim that does not involve the kinds of interests as set out in subparagraphs (a) through (e); or

(i) a loan to a financial institution or a debt instrument issued by a financial institution, except if it is a loan to or a debt instrument issued by a financial institution treated as capital for regulatory purposes by a Party in whose territory the financial institution is located;

investment of an investor of a Party: an investment owned or directly controlled by an investor of the Party. In the case of an enterprise, an investment is property of an investor of a Party if this investor holds more than fifty per cent (50%) of it equity interest. An investment is controlled by an investor of a Party if the investor has the power to:

(a) designate a majority of directors; or

(b) legally manage its operations in any other way;

investor of a Party: a Party or a state enterprise thereof, or a national or enterprise of the Party, that seeks to make, makes or has made an investment in the territory of the other Party. The intention of trying to realize an investment may demonstrate, among other forms, by means of juridical acts tending to materialize the investment, or being in process of compromising the necessary resources to realize it;

new financial service: a financial service not provided in the territory of a Party that is provided within the territory of the other 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 territory of a Party;

provider of cross-border financial services of a Party: a person authorized by a Party who undertakes the business of providing financial services in its territory and who tries to conduct or conducts cross-border financial services;

provider of financial services of a Party: a person of a Party who undertakes the business of providing some financial service in the territory of the other Party;

public entity: a central bank or monetary authority of a Party, or any financial institution of public nature owned or controlled by a Party, and does not have commercial functions;

regulatory authorities: any governmental body that exercises a supervising authority over providers of financial services or financial institutions; and

self-regulatory organization: any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that

exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

Article 12.02. Scope and Coverage

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the territory of the Party; and

(c) cross-border trade in financial services.

2. Nothing in this Chapter shall be construed to prevent a Party, or its public entities, from exclusively conducting or providing in its territory:

(a) activities conducted by the monetary authorities or by any other public institution with the aim of implementing monetary or exchange policies;

(b) activities or services forming part of a public retirement plan or statutory system of social security; or

(c) other activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

3. The provisions of this Chapter shall prevail upon those of other Chapters, except where there is an explicit reference to these Chapters.

4. Article 10.11 (Expropriation and Compensation) forms a part of this Chapter.

Article 12.03. Self-regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service provider of the other Party to be a member of, participate in, or have access to, a self- regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self- regulatory organization.

Article 12.04. Right of Establishment

1. The Parties recognize the principle that investors of a Party shall be permitted to establish a financial institution in the territory of the other Party through any forms of establishment and operation that the law of that Party permits.

2. Each Party may impose terms and conditions on establishment of a financial institution that are consistent with Article 12.06.

Article 12.05. Cross-border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of the other Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Schedule to Annex VIof the Party.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of the other Party located in the territory of that other Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. The Parties may define "solicitation" and "doing business" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of the other Party and of financial instruments.

Article 12.06. National Treatment

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

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

3. Subject to Article 12.05, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of the other Party treatment no less favorable than that it accords to its own similar financial service providers, with respect to the provision of such service.

4. A Party's treatment of similar financial institutions and similar cross-border financial service providers of the other Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

5. A Party's treatment does not afford equal competitive opportunities if it disadvantages similar financial institutions and similar cross-border financial service providers of the other Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and similar financial service providers to provide such services.

Article 12.07. Most-Favored-Nation Treatment

Each Party shall accord to investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of the other Party treatment no less favorable than that it accords in similar circumstances to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of a ny non-Parties.

Article 12.08. Recognition and Harmonization

1. Where a Party applies measures included in this Chapter it may recognize the prudential measures of the other Party or of a non-Party. This recognition may be:

(a) unilaterally granted;

(b) reached through harmonization or other means; or

(c) based on an agreement or arrangement with the other Party or with the non-Party.

2. The Party that grants the recognition of prudential measures according to paragraph 1, shall give the other Party appropriate opportunities to show the existence of circumstances in which there are or shall be equivalent regulations, supervision and implementation of regulations and, as appropriate, procedures to share information between the Parties.

3. Where a Party grants recognition to the prudential measures according to paragraph 1(c) and the circumstances of paragraph 2 exist, this Party shall give appropriate opportunities to the other Party to negotiate the accession to the agreement or arrangement, or to negotiate a similar agreement or arrangement.

4. No provision of this Article shall be construed as the application of a mandatory procedure of review of the financial system or the prudential measures of a Party by the other Party.

Article 12.09. Exceptions

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

(a) the protection of fund administrators, investors, depositors, financial market participants, policyholders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers;, and

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

2. Nothing in this Chapter applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations of Investment Performance Requirements with respect to measures covered by Chapter 10 (Investment) or Article 12.17.

3. Article 12.06 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 12.02 paragraph 2(b).

4. Notwithstanding Article 12.17(1), (2) and (3), a Party may prevent or limit transfers by a financial institution or cross-border financial service provider to, or for the benefit of, an affiliate of or person related to such institution or service provider, through the equitable, and non-discriminatory application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

Article 12.10. Transparency

In addition to the Article 17.03 (Publication), each Party shall undertake the following:

1. Each Party's regulatory authorities shall make available to interested persons all related information for completing applications relating to the provision of financial services.

2. On the request of an applicant, the regulatory authorities shall inform the applicant of the status of its application. If such authorities require additional information from the applicant, they shall notify the applicant without undue delay.

3. Each regulatory authority shall make an administrative decision on a completed application of an investor in a fina ncial institution, a financial institution or a cross-border financial service provider of the other Party relating to the provision of a financial service within 120 days. The authority shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within 60 days thereafter.

4. Nothing in this Chapter requires a Party to disclose or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.11. Committee on Financial Services

1. The Parties hereby establish the Committee on Financial Services, as set out in Annex 12.11.

2. The Committee shall hear matters relating to this Chapter and, without prejudice to the provisions of Article 18.05(2) (Committees), shall have the following functions:

(a) supervising the implementation of this Chapter and its further elaboration;

(b) considering issues regarding financial services that are referred to it by a Party;

(c) participating in the dispute settlement procedures in accordance with Articles 12.18 and 12.19; and

(d) facilitating the exchange of information between the supervising authorities, cooperating on advising about prudential regulation and endeavoring to harmonize the normative frameworks for regulations as well as the other policies, if it considers appropriate.

3. The Committee shall meet as necessary or by request of either Party to assess the implementation of this Chapter.

Article 12.12. Consultations

1. Without prejudice to Article 19.06 (Consultations), a Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.11.

3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding measures of general application of that other Party which may affect the operations of financial institutions or cross-border financial service providers in the territory of the requesting Party.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the territory of the other Party or a cross-border financial service provider in the territory of the other Party, the Party may approach the competent regulatory authority of the other Party to seek the information.

Article 12.13. New Financial Services and Data Processing

1. Each Party shall allow a financial institution of the other Party to provide any new financial service of a type similar to those that the Party allows to its own financial institutions according to its law. The Party may decide the institutional and juridical forms through which this service shall be offered and may require authorization for the provision of the service. Where an authorization is required, the relevant dispositions shall be issued in a reasonable period of time and may only be denied for prudential reasons, provided that the reasons are not contrary to the law of the Party, and to Articles 12.06 and 12.07.

2. Each Party shall allow the financial institutions of the other Party to transfer information for processing into or out of the territory of the Party, using any means authorized within it, if this is necessary to conduct regular business activities in these institutions.

3. Each Party commits itself to respecting the confidentiality of the information processed within its territory and originating in a financial institution located in the other Party.

Article 12.14. Senior Management and Board of Directors

1. No Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that the board of directors or administrative council of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.15. Reservations and Specific Commitments

1. Articles12.04 through 12.07, 12.13 and 12.14 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the national level, as set out in Section A of its Schedule to Annex VI;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.04 through 12.07, 12.13 and 12.14.

2. Articles 12.04 through 12.07, 12.13 and 12.14 do not apply to any non-

conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VI.

3. Section C of each Party's Schedule to Annex VI sets out certain specific commitments by that Party.

4. In Chapters 10 (Investment) and 11 (Cross-border Trade in Services) a reservation on matters relating to local presence, national treatment, most-favored- nation treatment, senior management and board of directors and administrative council shall be deemed to constitute a reservation from Article 12.04 through 12.07, 12.13 and 12.14, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

Article 12.16. Denial of Benefits

A Party may partially or wholly deny the benefits arising from this Chapter to a provider of financial services of the other Party or to a provider of cross-border financial services of the other Party, upon notification and consultations, according to Articles 12.10 and 12.12, if the Party determines that the service is being provided by an enterprise that does not conduct substantial trade activities in the territory of the other Party and is owned by persons of a non-Party or is under their control.

Article 12.17. Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:

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

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

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

(d) payments made pursuant to Article 10.11 (Expropriation and Compensation); and

(e) proceeds from a dispute settlement procedure between a Party and an investor of the other Party pursuant to this Chapter and Section B of Chapter 10 (Investment).

2. Each Party shall permit transfers to be made without delay in a currency of free convertibility at the market rate of exchange prevailing on the date of transfer.

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the fair and non-discriminatory application of its laws in cases of:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) criminal or penal offenses or confirmed administrative resolutions;

(c) non-compliance with the requirement to report on currency transfers or other monetary instruments;

(d) ensuring the satisfaction of judgments and awards in adjudicatory proceedings; or

(e) ensuring the enforcement of laws and regulations on issues, trade and operations of securities.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the fair and non-discriminatory application of its laws relating to the matters set out in paragraph 4.

Article 12.18. Dispute Settlement between the Parties

1. Chapter 19 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Committee on Financial Services shall maintain by consensus a roster of up to eighteen (18) individuals including five (5) individuals of each Party, who are willing and able to serve as arbitrators in disputes related to this Chapter. The roster members shall meet the quality set out in Chapter 19 (Dispute Settlement) and have broad practicing experience in financial sectors or financial regulation.

3. For purposes of constituting the arbitral group, the roster referred to in paragraph 2 shall be used, unless the disputing Parties agree that the arbitral group may comprise individuals not included in this roster, provided that they conform to the requirements under paragraph 2. The president shall always be elected from that roster.

4. In any dispute where the arbitral group finds a measure to be inconsistent with the obligations of this Chapter when a suspension of benefits is processed under Chapter 19 (Dispute Settlement) and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in this sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the purpose of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.19. Investment Disputes Settlement In Financial Services between an Investor of a Party and the other Party

1. Section B of Chapter 10 (Investment) shall be incorporated into this Chapter and be made as a part of it.

2. Where an investor of the other Party submits a claim under Article 10.17 (Claim by an Investor of a Party on Its Own Behalf) or 10.18 (Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section B of Chapter 10 (Investment) against a Party and the disputing Party invokes Article 12.09, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed before the receipt of a decision under this Article.

3. In a referral pursuant to paragraph 2, the Committee shall decide the issue of whether and to what extent Article 12.09 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

4. Where the Committee has not decided the issue within sixty (60) days of the receipt of the referral under paragraph 2, the disputing Party or the Party of the disputing investor may request the establishment of anarbitral group under Article 19.09 (Request for an Arbitral Group). The arbitral group shall be constituted in accordance with Article 12.18 and shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

5. Where no request for the establishment of an arbitral group pursuant to paragraph 4 has been made within ten (10) days of the expiration of the 60-day period referred to that paragraph, the Tribunal may proceed to decide the matter.

Chapter 13. TELECOMMUNICATIONS

Article 13.01. Definitions

For purposes of this Chapter, the following terms shall be understood as:

authorized equipment: terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure: "conformity assessment procedure" as defined in Article 9.01 (Definitions), and includes the procedures referred to in Annex 13.01(A);

enhanced or value-added services: those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

Intra-corporate communications: subject to Annex 13.01(B), telecommunications through which an enterprise communicates:

(a) internally, with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the company and that have a continuing contractual relationship with it, but does not include telecommunications services provided to persons other than those described herein;

main provider or dominant operator: a provider with the capacity to deeply affect the conditions of participation (from the point of view of prices and supply) of the telecommunication services in a given market due to its control of essential infrastructure or the use of its market position;

monopoly: a body, including a consortium or a governmental body, maintained or designed according to its law, if so allowed, as the exclusive provider of telecommunication networks or public services in any relevant market in the territory of a Party;

network termination point: the final demarcation of the public telecommunications transport network at the customer's premises;

private telecommunications network: subject to Annex 13.01(B), a telecommunications transport network that is used exclusively for intra-corporate communications or between predetermined persons ;

protocol: a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signali ng or data information;

public telecommunications transport network: public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service: any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer information;

standards-related measure: a "standards-related measure" as defined in Article 9.01 (Definitions);

telecommunications: any transmission, emission or reception of signs, signals, writings, images, sounds and information of any kind, through a physical line, radio- electricity, optical means or other electromagnetic systems;

telecommunications service: a service supplied by signal transmission and reception through physical lines, radio-electricity, optical means or other electromagnetic systems, but does not mean distribution by cable, radio broadcasting or other kind of electromagnetic distribution of radio and television programmes; and

terminal equipment: any analog or digital 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 13.02. Scope and Coverage

1. This Chapter applies to:

(a) subject to Annex 13.01(A), measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including prices fixing and access and use by such persons operating private networks for intra- corporate communications;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems

have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

(b) require a Party, or require a Party to oblige any person, to establish, construct, acquire, lease, operate or supply telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private telecommunication networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to oblige a person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 13.3. Access to and Use of Public Telecommunications Transport Networks and Services

1. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

2. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in the rest part of this Article.

3. Subject to paragraphs 7, 8 and Annex 13.01(B), each Party shall ensure that such persons are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons, according to those set out in Annex 13.01(B);

(c) perform switching, signaling and processing functions; and

(d) use operating protocols of their choice, according to the technical plans of each Party.

4. Without prejudice to its applicable law, each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services. Nothing in this paragraph shall be construed to permit a party to establish cross-subsidization between public telecommunications transport services.

5. Under Annex 13.01(B), each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for Intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine -readable form in the territory of either Party.

6. Further to Article 20.02 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

7. Further to Article 13.05, each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

8. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

(a) a restriction on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and

(d) a licensing, permit, concession, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 13.04. Conditions for the Provision of Enhanced or Value-added Services

1. Each Party shall ensure that:

(a) any licensing, permit, concession, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value- added services is transparent and non-discriminatory, and that applications filed thereunder are processed diligently; and

(b) information required under such procedures, adjustable under the existing law of the Parties, to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. Without prejudicing the law of either Party, neither Party may require a service provider of enhanced or value-added services to:

(a) provide those services to the public generally;

(b) adjust its rates or price on cost base;

(c) file a tariff or price;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly, main provider, incumbent carrier to which Article 13.06 applies.

Article 13.05. Standards-Related Measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to

the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction;

(e) ensure users' safety and access to public telecommunications transport networks or services; or

(f) ensureelectromagneticspectrum'sefficiency.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1 .

5. Each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non- discriminatory.

6. When the condition allows it, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

Article 13.06. Monopolies or Anti-competition Practice

1. Where a Party maintains or designates a monopoly, or main provider or incumbent carrier, to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value -added services or other telecommunications -related services or telecommunications-related goods, the Party shall ensure that the monopoly, main provider or incumbent carrier does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall make efforts to conform with or maintain effective measures as referred to paragraph 1, such as:

(a) accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly, main provider or incumbent carrier accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 13.07. Transparency

Further to Article 17.03 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) tariffs, price and other terms and conditions of service;

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration, certificate licensing or concession requirements.

Article 13.08. Relation to other Chapters

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

Article 13.09. Relation to other International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 13.10. Technical Cooperation and other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Chapter 14. TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 14.01. Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

business activities: legitimate commercial activities undertaken and operated with the purpose of obtaining profits in the market, not including the possibility of obtaining employment, wages or remuneration from a labour source in the territory of a Party;

business person: a national of a Party who is engaged in trade of goods, provision of services or conduct of investment activities;

national: "national" as defined in Chapter 2 (General Definitions), but not including those permanent residents or definitive residents;

labour certification: procedure applied by the competent administrative authority with the purpose of determining if a national of a Party who seeks a temporary entry into the territory of the other Party displaces national workers in the same domestic industry or noticeably harms labour conditions in it;

pattern of practice: a practice repeatedly followed by the immigration authorities of one Party during the representative period immediately before the execution of the same;

temporary entry: entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

2. For purposes of Annex 14.04:

executive functions: functions assigned in an organization to a person who shall have the following basic responsibilities:

(a) managing the administration of the organization, or of a relevant component, or function within it;

(b) establishing the policies and objectives of the organization, component or function; or

(c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders.

management functions: functions assigned in an organization to a person who shall have the following basic responsibilities:

(a) managing the organization or an essential function within it;

(b) supervising and controlling the work of other professional employees, supervisors or administrators;

(c) having the authority to engage and dismiss or to recommend the seactions, and to undertake other actions related to management of the personnel directly supervised by this person, and to perform senior functions within the organization hierarchy or functions related to his position; or

(d) performing discretionary actions related to the daily operation of the function over which this person has the authority; and

functions requiring specialized knowledge: functions that require special knowledge of goods, services, research, equipment, techniques, management of an organization or of its interests and their application in international markets, or an advanced level of knowledge or experience in the processes and procedures of the organization.

Article 14.02. General Principles

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the necessity to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 14.03. General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.02 and, in particular, shall apply expeditiously those measures so as to avoid unduly delaying or impairing trade in goods or services or 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 14.04. Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provision of Annex 14.04 and 14.04(1).

2. A Party may refuse a temporary entry to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses a temporary entry in accordance with paragraph 2, the Party shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing 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. An authorization of temporary entry under this Chapter, does not supersede the requirements demanded by the exercise of a profession or activity according to the specific rules in force in the territory of the Party authorizing the temporary entry.

Article 14.05. Provision of Information

1. Further to Article 17.03 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect, maintain, and make available to the other Party the information respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each authorized category.

Article 14.06. Dispute Settlement

1. A Party may not initiate proceedings under Article 19.06 (Consultations) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 14.03 unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative review regarding the particular matter.

2. The administrative review referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within 6 months 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 14.07. Relation to other Chapters

Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 18 (Administration of the Agreement) and 21 (Final Provisions) and Articles 17.02 (Information Centre), 17.03 (Publication), 17.04 (Provision of Information) and 17.06 (Administrative Proceedings for Adopting Measures of General Applications), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Part FIVE. COMPETITION POLICY

Chapter 15. COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Section A. Competition Policy

Article 15.01. Objectives

The objectives of the this Chapter consist of assuring that the benefits of the trade liberalization are not reduced by anticompetitive activities and promoting the cooperation and coordination between the authorities of the Parties.

Article 15.02. Cooperation

1. The Parties recognize the importance of the cooperation and coordination in the application of their enforcement mechanisms, including notification, consultations and mutual exchange of information regarding the enforcement of the competition laws and policies in the area of free trade as long as they do not contravene legal obligations regarding confidentiality.

2. To such end, each Party shall adopt and maintain measures to prohibit anticompetitive trade practices and shall apply the appropriate enforcement mechanisms under those measures, recognizing that such measures will contribute to the

fulfillment of the objectives as set forth in this Agreement.

Section B. Monopolies and State Enterprises

Article 15.03. Monopolies and State Enterprises

1. Nothing in this Agreement shall prevent a Party from designating or maintaining a monopoly or a state enterprise if and whenever its law permits it.

2. If a Party's law does permit it, where the Party intends to designate a monopoly or a state enterprise, and the designation may affect the interests of persons of the other Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement.

3. Each Party shall ensure, if designation or maintenance of a monopoly or a state enterprise is permitted by the Party's law, that any monopoly or any state enterprise designated or maintained by the Party:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly or a state enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopolized goods or services such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) provides non-discriminatory treatment to investments of investors, to goods and to service providers of the other Party in its purchase or sale of the monopolized goods or services in the relevant market; and

(c) does not use its monopoly position to engage, either directly or indirectly, in anticompetitive practices that adversely affect an investment of an investor of the other Party.

4. Paragraph 3 does not apply to procurement by governmental agencies of goods or services for official purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.

Part SIX. INTELLECTUAL PROPERTY RIGHTS

Chapter 16. INTELLECTUAL PROPERTY

Section A. General Provisions

Article 16.01. General Provisions

The Parties agree that TRIPS and the following intellectual property (IP) related international conventions shall govern and apply to all intellectual property issues arising from this Agreement:

(a) the Paris Convention for the Protection of Industrial Property (1967);

(b) the Bern Convention for the Protection of Literary and Artistic Works (1971);

(c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;

(d) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Reproduction;

(e) the Convention of the International Union for the Protection of New Varieties of Plants (UPOV), Act of 1978 or Act of 1991 according to the country;

(f) the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996; and

(g) the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty of 1996.

Section B. Protection of the Intellectual Property Rights

Article 16.02. General Obligations

1. Each Party shall accord nationals of the other Party appropriate protection and enforcement of intelectual property rights referred to in this Chapter and shall ensure that measures intended for the enforcement of these rights do not create obstacles to legitimate trade.

2. Each Party may accord in its legislation a broader protection to the intellectual property rights than the protection required in this Chapter, provided that this protection is not inconsistent with the provision of the Chapter.

Article 16.03. Exhaustion of the Copyright and Related Rights

1. The Parties agree to apply the principle of the copyright and related rights exhaustion, meaning that the holder of the copyright and related rights shall not hinder free trade of legitimate products in a Party, once legally introduced for trade into that Party, by the same right or license holder or by any other authorized third person, provided that these products and the packages that are in immediate contact with them have not suffered any modification or alteration.

2. The Parties have one year from the entry into force of this Agreement to incorporate this principle into its national legislation.

Article 16.04. Protection of Geographic Indications

1. Each Party shall recognize and protect the geographical indications of another Party provided for in this Article.

2. Neither Party shall permit the importation, manufacture or sale of goods using a geographical indication protected by the other Party, unless it is processed and certified in the originating Party according to the applicable legislation governing the geographic indication.

3. The provisions in paragraphs 1 and 2 shall only be effective with regard to the geographical indications that are protected by the legislation of the Party demanding protection and whose definition agreed upon by section 3 of TRIPS. Likewise, to accede to protection, each Party shall notify the other Party of the geographical indications, which comply with the above-mentioned requirements and shall be included in the scope of protection.

4. The above mentioned provisions shall be understood without prejudice to the recognition that the Parties may accord to the homonymous geographical indications that may lawfully belong to a non-Party.

Appellation of Origin for Seco

5. The ROC shall recognize the appellation of origin “Seco” for exclusive use as a kind of spirits made from sugarcane originating in Panama. Consequently it shall not be permitted in the ROC the importation, manufacture or sale of this product, unless it is processed in Panama, according to Panamanian laws, rules, technical regulations and standards applicable to the said product.

6. The provisions of Section C (Enforcement) of this Chapter, as well as those established in Article 23 (1) of TRIPS shall be applicable to the appellation of origin for Seco.

Article 16.05. Protection of Traditional Knowledge

1. Each Party shall protect the collective intellectual property rights and the traditional knowledge of indigenous people on their creations, subject to commercial use, through a special system of registration, promotion and marketing of their rights, aiming at emphasizing the indigenous sociological and cultural values of the indigenous people and the local communities and bring to them social justice.

2. Each Party shall recognize that the customs, traditions, beliefs, spirituality, religiosity, cosmos vision, folklore expressions, artistic manifestations, traditional skills and any other form of traditional expression of the indigenous people and local communities are a part of their cultural heritage.

3. The cultural heritage shall not be subject to any form of exclusivity by unauthorized third parties applying the intellectual property system, unless the request is done by the indigenous people and local communities or by third parties with their authorization.

Article 16.06. Protection of Folklore

Each Party shall ensure the effective protection of all folklore expressions and manifestations and of artistic manifestations of the traditional and popular culture of the indigenous and local communities.

Article 16.07. Relation between Access to Genetic Resources and Intellectual Property

1. Each Party shall protect the access to its genetic resources and the traditional knowledge developed by indigenous people and local communities on the uses of the biological resources containing these genetic resources, against the indiscriminate use of biological diversity, as well as ensuring that the Party will participate in benefits derived from the use of its genetic resources.

2. Each Party shall accord a fair and equitable participation in the benefits derived from the access to its genetic resources and from the uses of its traditional knowledge and folklore expressions.

3. Each Party shall ensure that the protection accorded to the industrial property shall safeguard its biological and genetic heritage. Consequently, the licensing of patents on inventions developed from material obtained from such heritage or traditional knowledge shall be subject to the condition that this material was acquired according to relevant national and international laws and regulations.

Article 16.08. Plant Breeders

1. Each Party shall recognize and ensure the so called “breeder’s right” through a special system of registration as provided for in the relevant laws and regulations in the territory of each Party, as well as through the mechanism of mutual recognition to be developed as agreed upon by the Parties, with the aim of protecting the rights originating from the use of plant varieties.

2. The right accorded to the breeder of a plant variety is an intellectual property right which accords to its holder an exclusive right, so that his or her authorization is required to conduct some acts of exploitation of the protected variety.

3. The breeder’s right shall be marketable, transferable and inheritable. The owner of the right may accord to third persons license to exploit the protected varieties.

4. The breeder’s right covers all plant species and genera and shall be applied to any kind of plants and seeds, and to any part thereof that can be used as reproduction or propagation material. The breeder’s right shall also be accorded where the variety is new, different, homogeneous and stable.

5. The right conferred on the breeder shall be granted for twenty (20) years in Panama and for fifteen (15) years in the ROC from the date of concession of the title of protection. In the case of vines, forest trees, fruit trees and ornamental trees, including in each case their rootstocks, the protection shall have a term of twenty five (25) years in Panama and of fifteen (15) years in the ROC. Once the protection term expires, the varieties shall be considered as in the public domain.

Section C. Enforcement

Article 16.09. Applications

1. The Parties confirm the effective rights and obligations among them with respect to the procedures of observance in accordance with TRIPS.

2. The Parties recognize that the growing importance of IP protection in traditional knowledge and folklore, genetic resources, geographic indications, plant breeders and other related matters is critical to economic competitiveness in the knowledge-based economy and to sustainable economic development. The Parties, therefore, confirm that either Party which is not party to one or more of the multilateral agreements listed in Article 16.01 shall undertake with the best efforts to pursue affiliation, in due course, to the said agreements.

Article 16.10. Enforcement of Intellectual Property Rights

Each Party shall establish in its legislation administrative, civil and criminal procedures, effective with the objective to reach an adequate and effective protection of the intellectual property rights. Also for all the procedures as mentioned above, the due process as regards the relationship between the plaintiff and the defendent shall be taken into account.

Article 16.11. Enforcement of Border Measures

Each Party shall adopt legislation on measures in border control, to the extent that the customs authorities shall be granted action to inspect or to retain merchandise, with the purposes of suspending or avoiding the free circulation of the merchandise involved to accord the rightholders protection.

Article 16.12. Transparency

The Parties shall notify the Committee on Intellectual Property under this Agreement the laws, regulations and the dispositions. In relation to final judicial decisions and administrative rulings of general application, the foregoing shall be published, or where such publication is not practical made publicly available, to enable the governments of each Party and right holders to become acquainted with them.

Article 16.13. Committee on Intellectual Property

1. The Parties hereby establish the Committee on Intellectual Property, as set out in Annex 16.13, to discuss and review all IP related issues arising from this Agreement.

2. An Expert Group of Intellectual Property shall be established under the Committee on Intellectual Property, composed of three IP experts from the Intellectual Property Office in each Party. The Committee or the Expert Group on Intellectual Property shall meet, in principle, once a year or as requested by either Party, subject to mutual agreement. The location of the meeting shall rotate between the Parties.

Article 16.14. Technical Cooperation

The Parties shall establish a system of technical cooperation between the Parties and within the framework of the WTO on matters relating to intellectual property, particularly in areas of newly developed IP-related issues.

Part SEVEN. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Chapter 17. TRANSPARENCY

Article 17.01. Definitions

For purposes of this Chapter, “administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and situations of fact that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 17.02. Information Centre

1. Each Party shall designate an office as an information centre for facilitating the communications between the Parties on any subject covered in this Agreement.

2. When a Party requests it, the information centre of the other Party shall indicate the office or official responsible for the matter and shall offer assistance required for facilitating communications with the requesting Party.

Article 17.03. Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application which are in reference to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and any interested person to become acquainted with them.

Article 17.04. Provision of Information

1. Each Party shall, to the maximum extent possible, notify the other Party of any actual measure in force which it considers could affect in the future or might already be materially affecting the interests of the other Party in terms of this Agreement.

2. Each Party, on request of the other Party, shall provide information and respond promptly to questions pertaining to any actual measure in force.

3. Any notification or the supplying of information on measures in force or proposed as referred to under this Article shall be made without prejudice to whether the measure is consistent with this Agreement.

Article 17.05. Guarantees on Hearing, Legality and Due Process

Each Party shall ensure that in legal and administrative proceedings related to the application of any measure referred to in Article 17.03 the guarantees on hearing, legality and due process established in their own laws are respected in the sense of Articles 17.06 and 17.07.

Article 17.06 . Administrative Proceedings for Adopting Measures of General Applications

For purposes of administering in a consistent, impartial and reasonable manner all measures of general application which affect aspects covered by this Agreement, each Party shall, in its administrative proceedings which are applying measures referred to in Article 17.03 with respect to persons, goods or services in particular of the other Party in specific cases, ensure that:

(a) wherever possible, persons of the other Party that would be directly affected by a proceeding are provided with reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a declaration of the authority which legally corresponds to the initiation of the proceeding and a general description of all of the issues in controversy;

(b) the said persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, provided that the time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with its legislation.

Article 17.07. Review and Appeal

1. Each Party shall maintain tribunals or judicial proceedings or proceedings of an administrative nature according to the Party's laws for purposes of a prompt and timely review and, where warranted, correction of definitive administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, before the said tribunals or in its procedures, the parties to the proceeding have the right to:

(a) a reasonable opportunity to support or defend their respective positions and arguments; and

(b) a decision based on the evidence and arguments presented by them.

3. Subject to appeal or further review as provided for in its laws, each Party shall ensure that such decisions are implemented by the offices or authorities.

Article 17.08. Communications and Notifications

Except any provision to the contrary, a communication or notification shall be considered delivered to a Party upon its receipt by the national section of the Secretariat of such Party.

Chapter 18. ADMINISTRATION OF THE AGREEMENT

Section A. Commission, Sub-commission and Secretariat

Article 18.01. Administrative Commission of the Agreement

1. The Parties hereby establish the Administrative Commission of the Agreement, which is composed of the officials referred to in Annex 18.01 or of the persons designated by them.

2. The Commission shall have the following functions:

(a) supervising the accomplishment and correct implementation of the provisions of this Agreement;

(b) evaluating the results achieved by the implementation of this Agreement;

(c) monitoring developments and making recommendations to the Parties for modifications as it deems appropriate ;

(d) resolving any dispute arising from the interpretation or application of this agreement, in accordance with Chapter 19 (Dispute Settlement);

(e) supervising the work of all committees established or created under this Agreement and pursuant to Article 18.05(3); and

(f) cosidering any other matter that may affect the functioning of this Agreement or that is entrusted to the Commission by the Parties.

3. The Commission may:

(a) create ad hoc or standing committees, or expert groups as necessary for implementing this Agreement, and assign functions to them;

(b) for purposes of accomplishing the objectives of this Agreement, modify:

(i) the schedule of goods of a Party contained in Annex 3.04 (Tariff Reduction Schedule) with the purposes of incorporating one or more of the goods excluded in the Tariff Reduction Schedule,

(ii) the period established in Annex 3.04 (Tariff Reduction Schedule) with the purpose of accelerating tariff reduction,

(iii) the rules of origin set out in Annex 4.03 (Specific Rules of Origin) ,

(iv) the Uniform Regulations,

(v) Annex I, II, III and IV of Chapter 10 (Investment),

(vi) Annex I, II and V of Chapter 11 (Cross-border Trade in Services), and

(vii) AnnexVIofChapter12(FinancialServices);

(c) seek the advice of non-governmental persons or groups;

(d) make and approve regulations required for the implementation of this Agreement; and

(e) take any other action in the exercise of its functions as the Parties may agree upon.

4. The modifications referred to in paragraph 3(b) shall be implemented by the Parties according to their respective national laws .

5. The Commission may establish its rules and procedures, and all its decisions shall be made by consensus.

6. The Commission shall convene at least once a year in regular session, and shall convene by request of a Party in special session. The location of the meeting shall rotate between the Parties.

Article 18.02. Administrative Sub-commission of the Agreement

1. The Parties hereby establish the Administrative Sub-commission of the Agreement, which is composed of the officials as set out in Annex 18.02 or persons designated by them.

2. The Sub-commission shall have the following functions:

(a) developing and reviewing the technical documents necessary for taking decisions under the Agreement;

(b) following up the decisions adopted by the Commission;

(c) without prejudice to Article 18.01(2), may also supervise the work of all committees, sub-committees and expert groups established under this Agreement and pursuant to Article 18.05(3); and

(d) reviewing any other matter that may affect the functioning of this Agreement and that is assigned by the Commission.

3. The Commission may establish rules and procedures applicable to the proper operation of theSub-commission.

Article 18.03. Secretariat

1. The Commission shall establish and oversee a Secretariat which is composed of their national sections.

2. Each Party:

(a) shall designate a permanent office or official responsible for acting on behalf of the national section of the Secretariat of such Party and shall notify the Commission of the address, phone number and any other relevant information where its national section is located;

(b) shall be responsible for:

(i) the operation and costs of its section; and

(ii) the remuneration and payment of the expenses of arbitrators, their assistants and the assigned experts under this Agreement, as set out in Annex 18.03; and

(c) shall designate a Secretary to serve in its national section, who shall be responsible for its administration.

3. The Secretariat shall have the following functions:

(a) providing assistance to the Commission and to the Sub-commission;

(b) providing administrative support to the arbitral groups created according to Chapter 19 (Dispute Settlement), in accordance with the proceedings established pursuant to Article 19.13(Model Rules of Procedure);

(c) by instructions of the Commission, supporting the work of the committees, sub-committees and expert groups established under this Agreement;

(d) conducting communications and notifications pursuant to Article 17.08 (Communications and Notifications); and

(e) other matters as assigned by the Commission.

Section B. Committees, Sub-committees and Expert Groups

Article 18.04. General Provisions

1. The provisions stated in this section shall, in a supplementary manner, apply to all committees, sub-committees and expert groups created under this Agreement.

2. Each committee, sub-committee and expert group shall be composed of representatives of each Party and all their decisions shall be made by consensus.

Article 18.05. Committees

1. The Commission may create committees other than those established according to Annex 18.04.

2. All committees shall have the following functions:

(a) monitoring by its jurisdiction the implementation of the Chapters of this Agreement;

(b) reviewing matters submitted by a Party claiming that a measure in force of the other Party by its jurisdiction has affected the effective implementation of the undertakings included in the Chapters of this Agreement;

(c) requesting the competent authority to prepare technical reports and taking necessary actions to settle the issue;

(d) assessing and recommending proposals to the Commission to modify, amend or add to the provisions of this Agreement within its competency;

(e) proposing to the Commission the revision of measures in force of a Party which it considers may be inconsistent with the obligations of this Agreement or may cause nullification or impairment in the sense of Annex 19.03 (Nullification and

Impairment); and

(f) carrying out other tasks that the Commission may assign to it pursuant to the provisions of this Agreement and other instruments derived from it.

3. The Commission and the Sub-commission shall supervise the work of all committees established or created under this Agreement.

4. Each committee may establish its own rules and procedures and shall meet upon the request of a Party or the Commission.

Article 18.06. Sub-Committees

1. With the aim of delegating its functions, a committee may create standing sub- committees for matters specifically delegated to them, and supervise their work. Each sub-committee shall have the same functions as a committee on matters for which it was delegated.

2. Each sub-committee shall report to the committee on the implementation of its mandate.

3. The rules and procedures of a sub-committee may be established by the committee that created it. Sub-committees shall meet at the request of a Party or their corresponding committee.

Article 18.07. Expert Groups

1. Notwithstanding Article 18.01(3)(a), a committee or sub-committee may also create ad hoc expert groups, with the purpose of conducting necessary technical research that it deems appropriate for accomplishing its functions, and shall supervise their work. The expert groups shall strictly accomplish what they have been entrusted to do, and within the terms and timeframes established. Each expert group shall report to the committee or sub-committee that created it.

2. The rules and procedures of an expert group may be established by the committee or sub-committee that created it.

Chapter 19. DISPUTE SETTLEMENT

Section A. Dispute Settlement

Article 19.01. Definitions

For purposes of this Chapter, the following definitions shall be understood as:

complaining Party: the Party that makes a claim;

consulting Party: any Party that holds consultations under Article 19.06; defendant Party: the Party against which a complaint is made; and

disputing Party: the complaining Party or the defendant Party.

Article 19.02. General Provisions

1. 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 any matter that might affect its operation.

2. Any settlement of matters raised under this Chapter shall be consistent with this Agreement and shall not nullify nor impair the benefits for the Parties deriving from it, nor shall impede the attainment of any objective of this Agreement.

3. The mutually satisfactory solutions reached by the Parties of any matters raised in accordance with the provisions of this Chapter, shall be notified to the Commission within a period of fifteen (15) days after the agreement on the settlement of the dispute in question is reached.

Article 19.03. Scope of Application

Except as otherwise provided for in this Agreement, the procedures of this Chapter shall apply:

(a) to prevent or settle disputes between the Parties regarding the application or interpretation of this Agreement; or

(b) when a Party considers that an actual measure of the other Party is or would be inconsistent with the obligations of this Agreement or might cause nullification or impairment as set out in Annex 19.03.

Article 19.04. Choice of Fora

1. The disputes arising in connection with the provisions of this Agreement and the WTO Agreement or agreements negotiated in accordance with the WTO Agreement may be settled in one of those fora, as the complaining Party chooses.

2. Where a Party has requested the establishment of an arbitral group under Article 19.09 or has requested the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement, the forum chosen shall be used to the exclusion of the other.

Article 19.05. Urgent Cases

1. In cases of urgency including such cases, as contemplated in paragraphs 2 and 3, the Parties and the arbitral groups shall make every effort to accelerate to the greatest extent the proceedings.

2. In cases of perishable agricultural goods, fish and fish products that are perishable:

(a) a consulting Party may request in writing that the Commission meet, when an issue is not resolved in accordance with Article 19.06 within fifteen (15) days following the submission of the request for consultations; and

(b) the Party that has requested the intervention of the Commission, may request in writing the formation of an arbitral group when the issue has not been resolved within fifteen (15) days after the meeting of the Commission, or if the Commission has not met, within fifteen (15) days after submitting the request for such a meeting .

3. In cases of urgency other than those referred to in paragraph 2, the Parties shall try to the extent possible to reduce by half the timeframe as provided for in Articles 19.07 and 19.09 for requesting a meeting of the Commission and the establishment of an arbitral group respectively.

Article 19.06. Consultations

1. A Party may request in writing to enter into consultations with the other Party regarding any actual measure or any other matter that the Party considers may affect the operation of this Agreement in terms of Article 19.03.

2. The complaining Party requesting consultations shall submit their request to the responsible agency of the other Party.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution on any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

(a) provide information to allow the undertaking of the examining of how the actual measures or any other matter might affect the operation of this Agreement; and

(b) treat the confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

The Initiation of the Proceedings

Article 19.07. Commission Intervention

1. Any consulting Party may request in writing that the Commission meet provided that:

(a) an issue that has not been resolved in accordance with Article 19.06 within thirty (30) days following the submission of the request for consultations, unless that the Parties agree another deadline by mutual consent; or

(b) the Party that has been delivered the request for consultations has not answered within the deadline of ten (10) days following the submission of the request.

2. The request referred to in paragraph 1 shall indicate the measure or any other issue that is the object of a claim and the

applicable provisions of this Agreement.

3. Unless otherwise decided, the Commission shall meet within ten (10) days following the submission of the request, and with the purpose of obtaining a mutually satisfactory dispute resolution, may:

(a) call on technical advisors or create expert groups as it considers necessary;

(b) request the good offices, conciliation or mediation of a person or group of persons or other alternative ways of dispute resolution; or

(c) formulate recommendations.

4. Unless otherwise decided, the Commission shall consolidate 2 or more proceedings under this Article relating to the same measure. The Commission may accumulate 2 or more proceedings under this Article in relation to other issues, when considered convenient to examine them jointly.

Article 19.08. Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are initiated on a voluntary basis if the Parties so agree.

2. Proceedings involving good office, conciliation and mediation, and in particular the positions of the Parties to the dispute during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under these procedures .

3. Good offices, conciliation or mediation may be requested at any time by either Party to a dispute. They may begin and be terminated at any time.

Proceeding of Arbitral Group

Article 19.09. Request for the Establishment of an Arbitral Group

1. The Party that has requested the intervention of the Commission, according to Article 19.07, may request in writing to the other Party for the establishment of an arbitral group, when the dispute in question cannot be resolved within:

(a) thirty (30) days after the meeting of the Commission, or if this has not been held, thirty (30) days after the submission of the request for a meeting of the Commission;

(b) thirty (30) days after the Commission has met and accumulated the most recent issue in accordance with Article 19.07(4); or

(c) any other period that the Parties may agree upon.

2. The request for the establishment of an arbitral group shall be made in writing, and shall state whether the consultations have been held, and in case that the Commission has met, state the actions taken; and the Party shall give the reason for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. Within fifteen (15) days of the submission of the request to the responsible agency of the other Party, the Commission shall establish the arbitral group in accordance with Article 19.12.

4. Unless the Parties agree otherwise, the arbitral group shall be established and shall exercise its functions in accordance with the provisions of this Chapter.

Article 19.10. List of Arbitrators

1. Upon entry into force of this Agreement, the Parties shall establish and maintain a list of up to twenty individuals with the required qualification to serve as arbitrators. Said list shall be composed of the "list of Arbitrators of the Parties" and the "List of Arbitrators of Non-Party Countries". Each Party may designate five (5) national arbitrators to form the "List of Arbitrators of the Parties", and five (5) arbitrators of Non-Party countries to form the "List of Arbitrators of Non-Party Countries".

2. The rosters of arbitrators might be modified every 3 years. Notwithstanding, the Commission might revise, by request of a Party, the roster of arbitrators before the expiration of this period.

3. The members of the rosters of arbitrators shall meet the qualifications set forth in Article 19.11.

Article 19.11. Qualifications of the Arbitrators

1. All the arbitrators shall meet the following qualifications:

(a) have speciali zed knowledge or experience in law, international trade, other matters related to this Agreement, or in the settlement of disputes arising from international trade agreements;

(b) be elected strictly according to their objectivity, integrity, reliability and good judgement;

(c) be independent, not associated with, and not accepting instructions from any Party; and

(d) observe the Code of Conduct that the Commission establishes.

2. Persons that have participated in a dispute under Article 19.07 (3) cannot serve as arbitrators for the same dispute.

Article 19.12. Composition of the Arbitral Group

1. In the establishment of the arbitral group, the Parties shall observe the following procedures:

(a) the arbitral group shall be composed of three members;

(b) the Parties shall endeavor to agree on the designation of the chair of the arbitral group within fifteen (15) days after the submission of the request for the establishment of the arbitral group;

(c) if the Parties do not reach an agreement within the above-mentioned timeframe, on the designation of the chair of the arbitral group, he or she shall be chosen by drawing lot from the "List of Arbitrators of non-Party Countries";

(d) within fifteen (15) days after the designation of the chair, each Party shall select an arbitrator from the "List of Arbitrators of the Parties", and the arbitrator selected could be one of the disputing Party's nationality; and

(e) if a disputing Party does not select an arbitrator, the arbitrator shall be chosen by drawing lot from the "List of Arbitrators of the Parties" and shall be of that Party's nationality.

2. Where a disputing Party considers that an arbitrator has violated the Code of Conduct, the Parties shall hold consultations and decide whether to remove that arbitrator and select a new one pursuant to the provisions of this Article.

Article 19.13. Model Rules of Procedure

1. Upon the entry into force of this Agreement, the Commission shall establish the Model Rules of Procedure in accordance with the following principles:

(a) the procedures shall ensure the right of a hearing before the arbitral group and the opportunity to present allegations and rebuttals in writing; and

(b) the hearings before the arbitral group, the deliberations and the preliminary report, as well as all the writings and communications presented in it shall be confidential.

2. The Commission may modify the Model Rules of Procedure.

3. Unless the Parties agree otherwise, the proceeding before the arbitral group shall follow the Model Rules of Procedure.

4. Unless the Parties agree otherwise, the mandate of the arbitral group shall be:

"To examine in light of the provisions of this Agreement the dispute submitted for its consideration under the terms set forth in the request for the meeting of the Commission, and make reports as provided for in Articles 19.15 and 19.16".

5. If the complaining Party claims that a matter was a cause of nullification or impairment of benefits in the sense of Annex 19.03, the mandate shall state it.

6. When a disputing Party requests that the arbitral group reaches conclusions about the extent of the adverse trade effects brought upon by the measure adopted by the other Party and considered by the disputing Party as inconsistent with the Agreement, or that the measure has caused nullification or impairment in the sense of Annex 19.03, the mandate shall state it.

Article 19.14. Information and Technical Advice

At the request of a disputing Party or ex officio, the arbitral group may seek information and technical advice from the persons or institutions that it deems appropriate under the Model Rules of Procedure.

Article 19.15. Preliminary Report

1. The arbitral group shall issue a preliminary report based on the arguments and submissions presented by the Parties and on any information received in accordance with Article 19.14, unless the Parties agree otherwise.

2. Unless the Parties agree otherwise, the arbitral group shall present to the Parties, within ninety (90) days of the nomination of the last arbitrator a preliminary report which includes :

(a) findings of fact, including any findings pursuant to a request under Article 19.13(6);

(b) a decision about the inconsistency or possible inconsistency of the measure in question with the obligations arising from this Agreement or about the measure being a cause of nullification or impairment as set out in Annex 19.03 or any other decision requested in the mandate;

(c) its recommendations, if any, to settle the dispute; and

(d) if this is the case, the timeframe for the implementation of the report in accordance with paragraphs 2 and 3 of Article 19.17.

3. Arbitrators may furnish separate opinions in writing on matters in which the consensus is not reached.

4. The Parties may make comments in writing to the arbitral group about the preliminary report within fourteen (14) days of its presentation.

5. In such an event and after examining the written comments, the arbitral group may ex officio or at the request of a disputing Party:

(a) request the comments from the Parties;
(b) reconsider its preliminary report; and
(c) take any steps deemed appropriate.

Article 19.16. Final Report

1. The arbitral group shall notify the Parties of its final report by majority vote, including any separate opinions in writing on matters in which there is no consensus, within thirty (30) days of the presentation of the preliminary report, unless the Parties agree on a different timeframe.

2. No arbitral group may reveal in its preliminary or final report the identity of the arbitrators that have joined either the majority or the minority vote.

3. The final report shall be published within fifteen (15) days of its notification to the Parties, unless they agree otherwise.

Article 19.17. Implementation of the Final Report

1. The final report shall make mandatory for the Parties the requirements and periods that it orders. The timeframe for implementing the final report shall not exceed 6 months from the date on which the final report was notified to the Parties, unless the Parties agree on a different timeframe.

2. If the final report of the arbitral group states that the measure is inconsistent with this Agreement, the defendant Party shall refrain from executing the measure or shall repeal it. The arbitral group shall determine a timeframe for implementation, taking into account the complexity of the de facto and de jure issues implied and the nature of the final report. This period shall not exceed 180 days.

3. If the final report states that the measure is a cause of nullification or impairment as set out in Annex 19.03, it shall specify the degree of nullification or impairment and may suggest the adjustments that it considers mutually satisfactory for the Parties. At the same time, the timeframe for reaching mutually satisfactory solutions should be determined, taking into account, the complexity of the de facto and de jure issues implied and the nature of the final report. This period should not exceed 180 days.

4. Within 5 days after the expiration of the timeframe determined by the arbitral group, the defendant Party shall inform the arbitral group and the other Party of actions adopted to comply with the final report. Within thirty (30) days after expiration of the timeframe as referred to in paragraphs 2 and 3, the arbitral group shall determine whether the defendant Party has complied with the final report. In case the arbitral group determines that the defendant Party has not complied with the final report, the complaining Party may suspend benefits in accordance with Article 19.18.

Article 19.18. Suspension of Benefits

1. The complaining Party may suspend the benefits to the defendant Party arising from this Agreement that have an effect equivalent to the benefits not received, if the arbitral group decides that:

(a) a measure is inconsistent with the obligations of this Agreement and that the defendant Party has not complied with the final report within the timeframe determined by the arbitral group in the final report; or

(b) a measure is a cause of nullification or impairment as set out in Annex 19.03 and the Parties have not reached a mutually satisfactory agreement on the dispute within the timeframe determined by the arbitral group.

2. The suspension of benefits shall last until the defendant Party complies with the final report or until the Parties reach a mutually satisfactory agreement on the dispute, as the case may be. When the defendant Party, after suspension of benefits, considers that it has adopted measures necessary to implement the final report and the complaining Party does not restore benefits previously suspended, it may ask for the establishment of an arbitral group in accordance with paragraph (4) to determine if it has complied with the final report.

3. In considering the benefits to be suspended in accordance with this Article:

(a) the complaining Party shall endeavor first to suspend benefits within the same sector or sectors affected by the measure or by other matter considered by the arbitral group as inconsistent with the obligations arising from this Agreement or that has been a cause of nullification or impairment as set out in Annex 19.03; and

(b) if the complaining Party considers that it is not feasible nor effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

4. Once the benefits have been suspended pursuant to this Article, the Parties, by request in writing from a Party, shall establish an arbitral group if necessary to determine if the final report has been complied with or if the level of benefits suspended to the defendant Party by the complaining Party under this Article is obviously excessive. To the extent practicable, the arbitral group shall be composed of the same arbitrators who have knowledge over the dispute.

5. The proceedings before the arbitral group established for purposes of paragraph 4 shall be carried forward pursuant to the Model Rules of Procedure set out in Article 19.13 and the final report shall be issued within sixty (60) days of the nomination of the last arbitrator, or any other timeframe agreed upon by the Parties. If this arbitral group was composed of the same arbitrators who have knowledge over the dispute, it shall present its final report within thirty (30) days of the presentation of the request referred to in paragraph 4.

Section B. Domestic Proceedings and Settlement of Private Commercial Disputes

Article 19.19. Interpretation of the Agreement Before Judicial and Administrative Proceedings

1. The Commission shall endeavor to give, as soon as possible, an appropriate and non-binding interpretation or response, where:

(a) a Party considers that a matter of interpretation or application of this Agreement arisen or that arises in a judicial or administrative proceeding of the other Party merits an interpretation by the Commission; or

(b) a Party communicates to the Commission of the reception of a request for an opinion about a matter of interpretation or implementation of this Agreement in a judicial or administrative proceeding of this Party.

2. The Party in which territory a judicial or administrative proceeding is taking place shall present in the proceeding the interpretation or response of the Commission in accordance with the procedures of that forum.

3. When the Commission does not agree upon an interpretation or response, a Party may submit its own opinion to the

judicial or administrative proceeding in accordance with the procedures of that forum.

Article 19.20. Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the grounds that a measure of that Party is inconsistent with this Agreement.

Article 19.21. Alternative Dispute Settlement Methods between Individuals

1. Each Party shall promote and facilitate arbitration and other alternative methods to settle international commercial disputes between individuals in the territories of the Parties.

2. For purposes of paragraph 1, each Party shall have appropriate procedures ensuring the observance of the international arbitration conventions that it has ratified and the recognition and implementation of arbitral awards in these disputes.

3. The Commission may establish a Consultative Committee o n Private Commercial Disputes, composed of persons with specialized knowledge or experience in the resolution of private international commercial disputes. Once the Committee is created, it shall present reports and recommendations in general nature about the existence, use and efficiency of arbitration and other procedures for dispute settlement.

Chapter 20. EXCEPTIONS

Article 20.01. Definitions

For purposes of this Chapter, the following terms shall be understood as:
IMF: the International Monetary Fund;

international capital transactions: "international capital transactions" as defined under the Articles of Agreement of the International Monetary Fund;

payments for current international transactions: "payments for current international transactions" as defined under the Articles of Agreement of the International Monetary Fund;

tax convention: a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

transfers: international transactions and related international transfers and payments.

Article 20.02. General Exceptions

1. Article XX of GATT 1994 and its interpretative notes are incorporated into this Agreement and form an integral part of it for purposes of:

(a) Part Two (Trade in Goods), except to the extent that some of its provisions apply to services or investment;

(b) Part Three (Technical Barriers to Trade), except to the extent that some of its provisions apply to services or to investment; and

(c) Part Five (Competition Policy), to the extent that some of its provisions apply to goods.

2. Subparagraphs (a), (b) and (c) of Article XIV of GATS are incorporated into this Agreement and form an integral part of it, for purposes of:

(a) Part Two (Trade in Goods), to the extent that some of its provisions apply to services;

(b) Part Three (Technical Barriers to Trade), to the extent that some of its provisions apply to services;

(c) Chapter 10 (Investment);

(d) Chapter 11 (C ross-border Trade in Services);

(e) Chapter 12 (Financial Services) ;

(f) Chapter 13 (Telecommunications) ;

(g) Chapter 14 (Temporary Entry for Business Persons); and

(h) Chapter 15 (Competition Policy, Monopolies and State Enterprises), to the extent that some of its provisions apply to services.

Article 20.03. National Security

Nothing in this Agreement shall be construed to:

(a) require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purposes of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent any Party from taking action in fulfilling of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 20.04. Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers when the Party is facing serious balance of payments difficulties, or the threat thereof, so long as such restrictions are consistent with this Article. A Party taking such measure shall do so in accordance with the conditions established under Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994.

2. The Party shall notify the other Party within thirty (30) days after the adoption of a measure in accordance with paragraph 1. In the event that both Parties become party to the Articles of Agreement of the IMF, the procedure of the following paragraph (paragraph 3 of this Article) should be followed.

3. As soon as feasible after a Party has applied a measure conforming with this Article, in accordance with the Party's international obligations, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

4. A measure adopted or maintained under this Article shall:

(a) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with paragraph 3(c) and with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment or most-favored-nation treatment basis, whichever is more favorable.

5. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party does not impose a measure for the purposes of protecting a specific industry or sector unless the measure is consistent with paragraph 3(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

6. Restrictions imposed on transfers:

(a) where they apply to payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;

(b) where they apply to international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under paragraph 3(a); and

(c) may not take the form of tariff surcharges, quotas, licenses or other similar measures.

Article 20.05. Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information of which the disclosure would impede law enforcement or would be contrary to the Party's Constitution or public interest or its laws for protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 20.06. Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between any such convention and this Agreement, the tax convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 3.03 (National Treatment) and other provisions of this Agreement necessary to make said Article effective shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.14 (Export Taxes) shall apply to taxation measures.

4. For purposes of this Article, taxation measures do not include:

(a) a “customs duty” as defined in Article 2.01 (Definitions of General Application); nor

(b) the measures listed in exceptions (b), (c) and (d) under the definition of customs duty.

5. Subject to paragraph 2:

(a) Articles 11.03 (National Treatment) and 12.06 (National Treatment) shal apply to taxation measures on profits, capital gains or on taxable capital of enterprises related to the purchase or consumption of particular services;

(b) Articles 10.02 (National Treatment), 10.03 (Most-Favored-Nation Treatment), 11.03 (National Treatment), 11.04 (Most-Favored-Nation Treatment), 12.06 (National Treatment) and 12.07 (Most-Favored-Nation Treatment) shall apply to taxation measures other than those related to profits, capital gains or taxable capital of enterprises, as well as estate, inheritance and gift taxes, except that nothing in those Articles shall apply to:

(i) any most-favored-nation obligations with respect to an advantage accorded by a Party in fulfillment of a tax convention;

(ii) any existing taxation measure which provides different tax treatment between residents and non-residents;

(iii) the amendment to a non-conforming provision of any existing tax measure as provided for in paragraph (d) above to the extent that the amendment does not decrease its conformity, at the time of the amendment with any of these Articles; or

(iv) any new tax measure which aims at ensuring the equitable and effective imposition or collection of taxes, and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded pursuant to those Articles, in the sense of Annex 19.03 (Nullification and Impairment).

Chapter 21. FINAL PROVISIONS

Article 21.01. Modifications

1. Any modification of this Agreement shall be agreed upon by both Parties.

2. The modifications agreed upon shall enter into force after their approval according to the applicable legal procedures of

each Party and shall be made a part of this Agreement.

Article 21.02. Reservations

This Agreement may not be subject to reservations or interpretative declarations by either Party at the time of its ratification.

Article 21.03. Validity

1. This Agreement shall have indefinite duration and shall enter into force between Panama and the ROC on the thirtieth day after the day on which the countries have exchanged their ratification instruments certifying that the procedures and legal formalities have been concluded.

2. For this Agreement to become effective between Panama and the ROC, it shall be stated in the ratification instruments that the legal procedures and requirements have been completed, which includes:

(a) Annex 3.04 (Tariff Reduction Schedule), relating to the Tariff Reduction Schedule between Panama and the ROC;

(b) Section C of Annex 4.03 (Specific Rules of Origin), applicable between Panama and the ROC;

(c) Annexes I, II, III and IV of Chapter 10 (Investment), relating to applicable reservations and restrictions on investment between Panama and the ROC;

(d) Annexes I, II and V of Chapter 11 (Cross-border Trade in Services), relating to applicable reservations and restrictions on cross-border services between Panama and the ROC;

(e) Annex VI of Chapter 12 (Financial Services), relating to applicable reservations and restrictions on financial services between Panama and the ROC;

(f) Annex 3.11(6) (Import and Export Restrictions), as appropriate; and

(g) Other matters as agreed upon by the Parties.

Article 21.04. Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

Article 21.05. Termination

1. Either Party may terminate this Agreement.

2. The termination shall enter into force 180 days after notification to the other Party without prejudice to a different date that the Parties may agree.

Article 21.06. Authentic Texts

The English, Spanish and Chinese texts of this Agreement are equally authentic. In the event of any discrepancy in the interpretation of this Agreement, the English version shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Taipei, in duplicate in the Chinese, Spanish and English languages, this twenty-first day of August of the year two thousand and three.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHINA:

Chen Shui-bian President Republic of China

FOR THE GOVERNMENT OF THE REPUBLIC OF PANAMA:

Mireya Moscoso Rodriguez President

Republic of Panama