FREE TRADE AGREEMENT BETWEEN THE EFTA STATES AND THE UNITED MEXICAN STATES

The Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to collectively as the EFTA States) and The United Mexican States, (hereinafter referred to as Mexico) hereinafter referred to as the Parties,

CONSIDERING the important links existing between Mexico and the EFTA States, and recognizing the common wish to strengthen these links, thus establishing close and lasting relations;

DESIROUS to contribute to the harmonious development and expansion of world trade and provide a catalyst to broader international and transatlantic co-operation;

DETERMINED to create an expanded and secure market for goods and services in their territories;

RESOLVED to ensure a stable and predictable environment for investment;

INTENDING to enhance the competitiveness of their firms in global markets;

AIMING to create new employment opportunities and improve working conditions and living standards in their respective territories;

DETERMINED to ensure that the gains from trade liberalisation are not offset by the erection of private, anti-competitive barriers;

WISHING to establish a free trade area through the removal of trade barriers;

CONVINCED that this Agreement will create conditions encouraging economic, trade and investment relations between them;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "the WTO") and other multilateral and bilateral instruments of co-operation;

RESOLVED to foster environmental protection and conservation, and to promote sustainable development,

HAVE AGREED, in pursuit of the above, to conclude this Free Trade Agreement:

Title I. GENERAL PROVISIONS

Article 1. Objectives

1. The EFTA States and Mexico hereby establish a Free Trade Area in accordance with the provisions of this Agreement.

2. The objectives of this Agreement are:

(a) the progressive and reciprocal liberalisation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade (hereinafter referred to as “the GATT 1994”);

(b) to provide fair conditions of competition affecting trade between the Parties;

(c) to open the government procurement markets of the Parties;

(d) the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services (hereinafter referred to as “the GATS”);

(e) the progressive liberalisation of investment;

(f) to ensure an adequate and effective protection of intellectual property rights, in accordance with the highest international standards; and

(g) to contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

Article 2. Geographical Scope

1. Without prejudice to Annex I, this Agreement shall apply:

(a) to the land territory, internal waters, and the territorial sea of a Party, and the air-space above the territory in accordance with international law.

(b) beyond the territorial sea , with respect to measures taken by a Party in the exercise of its sovereign rights or jurisdiction in accordance with international law.

2. Annex II applies with respect to Norway.

Article 3. Trade and Economic Relations Governed by this Agreement

1. The provisions of this Agreement apply to the trade and economic relations between, on the one side, the individual EFTA States and, on the other side, Mexico, but not to the trade relations between individual EFTA States, unless otherwise provided in this Agreement.

2. As a result of the customs union established by the Treaty of 29 March 1923 between Switzerland and the Principality of Liechtenstein, Switzerland shall represent the Principality of Liechtenstein in matters covered thereby.

Title II. TRADE IN GOODS

Article 4. Coverage

1. This Agreement applies to:

(a) products falling within Chapters 25 through 98 of the Harmonized Commodity Description and Coding System (HS), except for products listed in Annex I of the WTO Agreement on Agriculture; and

(b) fish and other marine products as provided for in Annex III, originating in an EFTA State or Mexico.

2. Mexico and each individual EFTA State have concluded agreements on trade in agricultural products on a bilateral basis. These agreements form part of the instruments establishing a free-trade area between the EFTA States and Mexico.

Article 5. Rules of Origin and Administrative Co-operation

The provisions on rules of origin and administrative co-operation are set out in Annex I.

Article 6. Customs Duties

1. Upon entry into force of this Agreement, the EFTA States shall eliminate all customs duties on imports of products originating in Mexico, except as provided for in Annex III and Annex IV.

2. Mexico shall eliminate all customs duties on imports of products originating in the EFTA States in accordance with Annex III and Annex V.

3. No new customs duties shall be introduced nor shall those already applied be increased in the trade between the EFTA States and Mexico, as from the date of entry into force of this Agreement.

4. A customs duty includes any duty or charge of any kind imposed in connection with the importation or exportation of a product, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article 8;

(b) anti-dumping or countervailing duty; or

(c) fee or other charge, provided that it is limited in amount to the approximate cost of services rendered and does not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes.

5. Upon entry into force of this Agreement, the Parties shall eliminate any fee or other charge referred to in paragraph 4(c) which is applied on originating products on an ad valorem basis.

Article 7. Import and Export Restrictions

1. All import or export prohibitions or restrictio ns in trade between the EFTA States and Mexico, other than customs duties and taxes, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced.
2. Paragraph 1 shall not apply to measures set out in Annex VI.

Article 8. National Treatment on Internal Taxation and Regulation

1. Products imported from another Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to domestic production. (1)

2. Products imported from another Party shall be accorded treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

3. The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

4. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement, which shall be subject exclusively to the provisions of Chapter V.

5. Paragraphs 1 and 2 shall not apply to the measures set out in AnnexVII until the date mentioned in that Annex.

(1) A tax conforming to the requirements of the first sentence would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, a taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

Article 9. Sanitary and Phytosanitary Measures

The rights and obligations of the Parties in respect of sanitary and phytosanitary measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Article 10. Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on Technical Barriers to Trade.

2. The Parties shall strengthen their co-operation in the field of technical regulations, standards and conformity assessment procedures. In particular they shall endeavour to facilitate the mutual exchange of information and assistance in this field and co-operate during the development of standards, technical regulations or conformity assessment procedures.

3. Without prejudice to paragraph 1, at the request of any Party, the Joint Committee shall hold consultations where Mexico or an EFTA State considers that one or more EFTA States or Mexico, respectively, have taken measures which have created or are likely to create an unjustified obstacle to trade, with a view to finding a mutually acceptable solution in conformity with the WTO Agreement on Technical Barriers to Trade.

Article 11. Subsidies

1. The rights and obligations of the Parties in respect of subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.

2. The Parties shall ensure transparency of state aid measures by exchanging their most recent notifications to the WTO pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.

3. After an EFTA State or Mexico, as the case may be, receives a properly documented application and before initiation of an investigation under the provisions of the Agreement referred to in paragraph 1, that Party shall notify in writing the Party whose goods are allegedly being subsidised and allow for a two-day period for consultations with a view to finding a mutually acceptable solution. The outcome of the consultations shall be communicated to the other Parties.

Article 12. State Trading Enterprises

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994.

Article 13. Anti-dumping

1. The rights and obligations of the Parties in respect of the application of anti-dumping measures shall be governed by Article VI of the GATT 1994 and the Agreement on Implementation of Article VI of the GATT 1994.

2. After an EFTA State or Mexico, as the case may be, receives a properly documented application and before initiation of an investigation under the provisions of the Agreement referred to in paragraph 1, that Party shall notify in writing the Party whose goods are allegedly being dumped and allow for a two-day period for consultations with a view to finding a mutually acceptable solution. The outcome of the consultations sha ll be communicated to the other Parties.

Article 14. Safeguards

1. Where any product of a Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

(a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party; or

(b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party, the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures shall not exceed what is necessary to remedy the difficulties which have arisen and should normally consist of the suspension of the further reduction of any applicable rate of duty provided for under this Agreement for the product concerned or the increase of the rate of duty for that product.

3. Such measures shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest. Measures shall not be taken for a period exceeding one year. In very exceptional circumstances, measures may be taken up to a total maximum period of three years. No safeguard measure shall be applied to the import of a product which has previously been subject to such a measure for a period of, at least, three years since the expiry of the measure.

4. The Party intending to take safeguard measures under this Article shall offer the other Party compensation in the form of substantially equivalent trade liberalisation in relation to the imports from the latter. The offer of liberalisation shall normally consist of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the safeguard measure.

5. The offer shall be made prior to the adoption of the safeguard measure and simultaneously with the supply of information and referral to the Joint Committee, as provided for in this Article. Should the offer not be considered satisfactory by the Party against whose product the safeguard measure is intended to be taken, both Parties may agree, in the consultations referred to in this Article, on other means of trade compensation.

6. If the Parties concerned are unable to agree on compensation, the Party against whose product the safeguard measure is taken may take compensatory tariff action having trade effects substantially equivalent to the safeguard measure taken under this Article. The Party taking compensatory tariff action shall apply it, as a maximum, for the period necessary to achieve equivalent trade effects.

7. In the cases specified in this Article, before taking the measures provided for herein or, in the cases to which paragraph 8(b) of this Article applies, as soon as possible, the EFTA State or Mexico, as the case may be, shall supply the Joint Committee with all relevant information, with a view to finding a solution mutually acceptable to the Parties.

8. For the implementation of the above paragraphs the following provisions shall apply:

(a) The Joint Committee shall examine the difficulties arising from the circumstances referred to in this Article and may take any decisions needed to put an end to such difficulties. If the Joint Committee or the exporting Party has not taken a decision putting an end to the difficulties or no other satisfactory solution has been reached within 30 days of the matter being referred to the Joint Committee, the importing Party may adopt the appropriate measures to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take compensatory tariff action in accordance with this Article. Such compensatory tariff action shall be immediately notified to the Joint Committee. In the selection of safeguard measures and compensatory tariff action, priority must be given to those which least disturb the functioning of the arrangements in this Agreement.

(b) Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Party concerned may, in the situations specified in this Article, apply forthwith precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

(c) The safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

9. In the event of an EFTA State or Mexico subjecting imports of products liable to give rise to the difficulties referred to in this Article to an administrative procedure for the purpose of the rapid provision of information on the trend of trade flows, it shall inform the other Party.

Article 15. Shortage Clause

1. Where compliance with Article 6 or Article 7 leads to:

(a) a critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or

(b) a shortage of essential quantities of domestic materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; or

(c) re-export to a third country of a product against which the exporting Party maintains export customs duties or export prohibitions or restrictions, and where the situations referred to above give rise, or are likely to give rise to major difficulties for the exporting Party, that Party may adopt export restrictions or export customs duties.

2. In the selection of measures, priority must be given to those which least disturb the functioning of the arrangements in this Agreement. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on trade, and shall be eliminated when the conditions no longer justify their maintenance. In addition, the measures which may be adopted pursuant to paragraph 1(b) of this Article shall not operate to increase the exports of or the protection afforded to the domestic processing industry concerned, and shall not depart from the provisions of this Agreement relating to non-discrimination.

3. Before taking the measures provided for in paragraph 1 of this Article or, as soon as possible in cases to which paragraph 4 of this Article applies the EFTA State or Mexico, as the case may be, shall supply the Joint Committee with all relevant information, with a view to finding a solution mutually acceptable to the Parties. The Parties within the Joint Committee may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the Joint Committee, the exporting Party may apply measures under this Article on the exportation of the product concerned.

4. Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the EFTA State or Mexico, whichever is concerned, may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

5. Any measures applied pursuant to this Article shall be immediately notified to the Joint Committee and shall be the subject of periodic consultations therein, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

Article 16. Balance of Payments Difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures relating to imports for balance of payments purposes. In the event of their introduction, the Party having introduced them shall present to the other Party, as soon as

possible, a timetable for their removal.

2. Where an EFTA State or Mexico is in serious balance of payments difficulties, or under imminent threat thereof, the EFTA State or Mexico, as the case may be, may in accordance with the conditions established under the GATT 1994, adopt restrictive measures relating to imports, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The EFTA State or Mexico, as the case may be, shall inform the other Party forthwith.

Article 17. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals;

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

(c) relating to the importations or exportations of gold and silver;

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the protection of intellectual property rights, and the prevention of deceptive practices;

(e) relating to the products of prison labour;

(f) imposed for the protections of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non discrimination;

(j) essential to the acquisition or distribution of products in general or local short supply. Provided that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 18. Security Exceptions

Nothing in this Agreement shall be construed

(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protections of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Title III. SERVICES AND INVESTMENT

Section I. Trade In Services

Article 19. Coverage

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

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

(b) in the territory of a Party to the service consumer of another Party;

(c) by a service supplier of a Party, through commercial presence in the territory of another Party;

(d) by a service supplier of a Party, through presence of natural persons in the territory of another Party.

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

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

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

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

(iii) computer reservation system (CRS) services.

3. Maritime transport and financial services shall be governed by the provisions of Sections II and III, respectively, unless otherwise specified.

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

5. Subsidies related to trade in services shall not be covered under this Section. The Parties shall pay particular attention to any disciplines agreed under the negotiations mandated by Article XV of the GATS with a view to their incorporation into this Agreement.

6. This Section applies to measures taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

Article 20. Definitions

For purposes of this Section: "commercial presence" means:

(i) as regards nationals, the right to set up and manage undertakings, which they effectively control. This shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party; (2)

(ii) as regards juridical persons, the right to take up and pursue the economic activities covered by this Section by means of the setting up and management of subsidiaries, branches or any other form of secondary establishment; (3)

"EFTA State juridical person" or "Mexican juridical person" means a juridical person set up in accordance with the laws of an EFTA State or of Mexico, respectively, and having its registered office, central administration, or principal place of business in the territory of an EFTA State or of Mexico, respectively;

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

"national" means a natural person who is a national of one of the EFTA States or Mexico in accordance with their respective legislations; (4)

"service supplier" of a Party means any person of a Party that seeks to provide or provides a service; "subsidiary" means a juridical person that is effectively controlled by another juridical person.

"territory" means the geographical area referred to in paragraph 1 of Article 2.

(2) The right to set up undertakings which they effectively control includes the right to acquire controlling stakes in a company of a Party

(3) The setting up of secondary establishments includes the right to acquire controlling stakes in a company of a Party.

(4) National includes a permanent resident if he or she is treated as a national in accordance with the legislation of such Party.

Article 21. Market Access

In those sectors and modes of supply which shall be liberalised pursuant to the decision provided for in paragraph 3 of Article 24, no Party shall adopt or maintain:

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

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

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

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

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

(f) measures which require specific types of legal entities or joint ventures through which a service supplier of another Party may supply a service.

Article 22. Most Favoured Nation Treatment

1. Subject to exceptions that may derive from harmonisation of regulations based on agreements concluded by a Party with a third country providing for mutual recognition in accordance with Article VII of the GATS, the EFTA States and Mexico shall accord to service suppliers of another Party treatment no less favourable than that they accord to like service suppliers of any other country.

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

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

4. The Parties agree to review the exclusion provided for in paragraph 2 with a view to its deletion not later than three years after the entry into force of this Agreement.

Article 23. National Treatment

1. Each Party shall, in accordance with Article 24, grant to service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like service suppliers.

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

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

Article 24. Trade Liberalisation

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

2. From the entry into force of this Agreement, neither Party shall adopt new, or more, discriminatory measures as regards

services or service suppliers of another Party, in comparison with the treatment accorded to its own like services or service suppliers.

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

(a) a list of commitments establishing the level of liberalisation which the Parties agree to grant each other at the end of a transitional period of ten years from the entry into force of this Agreement;

(b) a liberalisation calendar for each Party in order to reach, at the end of the ten-year transitional period, the level of liberalisation described in paragraph a).

4. Except as provided for in paragraph 2, Articles 21, 22 and 23 shall become applicable in accordance with the calendar and subject to any reservations stipulated in the Parties' lists of commitments provided for in paragraph 3.

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

Article 25. Right to Regulate

1. Each Party may regulate, and introduce new regulations, on the supply of services within its territory in order to meet national policy objectives, in so far as regulations do not impair on any rights and obligations arising under this Agreement.

2. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

Article 26. Mutual Recognition

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

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

Section II. Maritime Transport

Article 27. International Maritime Transport

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

2. The definitions contained in Article 20 apply to this Section. (5)

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

(a) the Parties shall continue to effectively apply the principle of unrestricted access to the international maritime market and traffic on a commercial and non-discriminatory basis;

(b) each Party shall continue to grant to ships operated by service suppliers of another Party treatment no less favourable than that accorded to its own ships with regard to, inter alia, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

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

5. Paragraph 4 shall become applicable in accordance with the calendar and subject to any reservation stipulated in the Parties' list of commitments provided for in paragraph 3 of Article 24.

(5) Notwithstanding Article 20, shipping companies established outside the EFTA States or Mexico and controlled by nationals of an EFTA State or Mexico, respectively, shall also be beneficiaries of the provisions of this Chapter, if their vessels are registered in accordance with their respective legislation, in that EFTA State or in Mexico and carry the flag of an EFTA State or Mexico.

Section III. Financial Services

Article 28. Definitions

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

"commercial presence" means a juridical entity within a Party's territory that supplies financial services and includes wholly or partly owned subsidiaries, joint ventures, partnerships, branches, agencies, representative offices or other organisations through franchising operations.

"financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

A. Insurance and insurance-related services:

1. direct insurance (including co-insurance):

(a) life;

(b) non-life;

2. reinsurance and retrocession;

3. insurance inter-mediation, such as brokerage and agency; and

4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;

2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

3. financial leasing;

4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

5. guarantees and commitments;

6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(a) money market instruments (including cheques, bills, certificates of deposits);

(b) foreign exchange;

(c) derivative products including, but not limited to, futures and options;

(d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(e) transferable securities; (f) other negotiable instruments and financial assets, including bullion;

7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

8. money broking;

9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

"financial service supplier" means any natural or juridical person of a Party authorised to supply financial services. The term "financial service supplier" does not include a public entity;

"new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of another Party;

"public entity" means:

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

2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Article 29. Establishment of Financial Service Suppliers

1. Each Party shall allow the financial service suppliers of another Party to establish, including through the acquisition of existing enterprises, a commercial presence in its territory.

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

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

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

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

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

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

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

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

Article 30. Cross-border Provision of Financial Services

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

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

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

require the registration of cross-border financial service suppliers of another Party.

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

Article 31. National Treatment

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

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

3. A Party's treatment of financial service suppliers of another Party, whether different or identical to that accorded to its own like financial service suppliers, is consistent with paragraph 1 if the treatment affords equal competitive opportunities.

4. A Party's treatment affords equal competitive opportunities if it does not modify the conditions of competition in favour of its own financial service suppliers as compared to like financial service suppliers of any other Party.

5. Differences in market share, profitability or size do not in themselves establish a denial regarding equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

Article 32. Most Favoured Nation Treatment

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

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

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

4. The Parties agree to review the exclusion provided for in paragraph 2 with a view to its deletion not later than three years after the entry into force of this Agreement.

Article 33. Key Personnel

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

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

Article 34. Commitments

1. Nothing in this Section shall be construed to prevent a Party from applying:

(a) any existing measure inconsistent with Articles 29 to 33 which is listed in Annex VIII; or

(b) an amendment to any discriminatory measure referred to in Annex VIII in subparagraph (a) to the extent that the amendment does not increase the inconsistency of the measure with Article 29 to 33, as it existed immediately before the amendment.

2. The measures listed in Annex VIII as well as in paragraph 2 of Article 29 shall be reviewed by the Sub-Committee on

Financial Services established under Article 40, with a view to proposing to the Joint Committee their modification, suspension or elimination.

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

Article 35. Right to Regulate

1. Each Party may regulate, and introduce new regulations, on the supply of financial services within their territory in order to meet national policy objectives, in so far as regulations do not impair on any rights and obligations arising under this Agreement.

2. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

Article 36. Prudential Carve-out

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

(a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or

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

2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of another Party in comparison to its own like financial service suppliers. 3. Nothing in this Section shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

Article 37. Effective and Transparent Regulation

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

(a) by means of an official publication; or

(b) in other written or electronic form.

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

3. On the request of an applicant, the appropriate financial 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.

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

Article 38. New Financial Services

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

Article 39. Data Processing

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

2. As far as the transfer of personal data is concerned, each Party shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals. To that end, the Parties agree to co-operate in order to improve the level of protection, in accordance with standards adopted by relevant international organisations.

3. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Agreement.

Article 40. Sub-committee on Financial Services

1. A Sub-Committee on Financial Services is hereby established. The Sub-Committee shall comprise representatives of the Parties. The principal representative of each Party shall be an official of the Party's authorities responsible for financial services set out in Annex IX.

2. The functions of the Sub-Committee are set out at Annex X to this Agreement.

Article 41. Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Section. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Sub-Committee on Financial Services at its annual meeting.

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

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

4. Where a competent authority of a Party requires information for supervisory purposes concerning a financial service supplier in another Party's territory, it may approach the competent authorities in the other Party's territory to seek the information.

Article 42. Dispute Settlement

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

Article 43. Specific Exceptions

1. Nothing in Sections I, II and III of this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out on a commercial basis.

2. Nothing in this Section applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Section shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

Section IV. General Exceptions

Article 44. Exceptions

1. The provisions of Sections I, II and III are subject to the exceptions contained in this Article.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in Sections I, II and III shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order and public security;

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

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Sections I, II and III including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety.

(d) inconsistent with Articles 22 and 32 provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance on double taxation in any other international agreement or arrangement by which a Party is bound, or domestic fiscal legislation; (6)

(e) aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of the agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation;

(f) distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested. (7)

3. The provisions of Sections I, II and III shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority, except when those activities may be carried out on a commercial basis.

4. Nothing in Sections I, II and III shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons (8) provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to another Party under the terms of a specific provision of Sections I, II and III.

(6) The provision is without prejudice to rights and obligations arising under any double taxation agreements between the Parties.
(7) The provision is without prejudice to rights and obligations arising under any double taxation agreements between the Parties.
(8) In particular, a Party may require that natural persons must possess the necessary academic qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

Section V. Investment

Article 45. Definitions

For the purpose of this Section, investment made in accordance with the laws and regulations of the Parties means direct investment, which is defined as investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof. (9)

(9) Direct Investment embraces operations carried out in the country concerned by non-residents and operations abroad by residents by means of: 1) creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise; 2) participation in a new or existing enterprise; 3) a loan of five years or longer.

Article 46. Transfers

1. The EFTA States and Mexico shall with respect to investments in their territories by investors of another Party guarantee the right of free transfer, into and out of their territories, including initial plus any additional capital, returns, payments under contract, royalties and fees, proceeds from the sale or liquidation of all or any part of an investment.

2. Transfers shall be made at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:

(a) taken to protect the rights of creditors in case of bankruptcy, insolvency or other legal actions;

(b) relating to or ensuring compliance with the laws and regulations:

(i) on the issuing, trading and dealing in securities, futures and derivatives,

(ii) concerning reports or records of transfers, or

(c) in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings.

Article 47. Investment Promotion between the Parties

The EFTA States and Mexico shall aim to promote an attractive and stable environment for reciprocal investment. Such promotion should take the form, in particular, of:

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

(b) development of a legal framework favourable to investment on both sides, particularly through the conclusion by the EFTA States and Mexico of bilateral agreements promoting and protecting investment and preventing double taxation;

(c) development of uniform and simplified administrative procedures; and

(d) development of mechanisms for joint investments, in particular with the small and medium enterprises of both Parties.

Article 48. International Commitments on Investment

1. The EFTA States and Mexico recall their international commitments with regard to investment, and especially, where applicable, the OECD Codes of Liberalisation and OECD National Treatment Instrument.

2. The provisions of this Agreement shall be without prejudice to the rights and obligations under any bilateral investment treaty concluded by the Parties to this Agreement.

Article 49. Review Clause

With the objective of progressively liberalising investment, the EFTA States and Mexico affirm their commitment to review, not later than three years after the entry into force of this Agreement, the investment legal framework, the investment climate and the flow of investment between their territories, consistent with their commitments in international investment agreements.

Section VI. Balance of Payment Difficulties

Article 50. Balance of Payments Difficulties

1. Where an EFTA State or Mexico is in serious balance of payments difficulties, or under imminent threat thereof, the EFTA State concerned, or Mexico, as the case may be, may adopt restrictive measures with regard to transfers and payments relating to services and investment. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation.

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

Title IV. COMPETITION

Article 51. Objective and General Principles

1. The Parties agree that anticompetitive business conduct can hinder the fulfilment of the objectives of this Agreement. Accordingly, each Party shall adopt or maintain measures to proscribe such conduct and take appropriate action with respect thereto.

2. The Parties undertake to apply their respective competition laws so as to avoid that the benefits of this Agreement may be undermined or nullified by anticompetitive business conduct. The Parties shall give particular attention to anticompetitive agreements, abuse of market power and anticompetitive mergers and acquisitions in accordance with their respective competition laws.

3. The competition laws for each Party are listed in AnnexXI.

Article 52. Co-operation

1. The Parties recognise the importance of co-operation on issues concerning competition law enforcement policy, such as notification, consultation and exchange of information related to the enforcement of their competition laws and policies.

2. A Party shall notify the other Party of competition enforcement activities that may affect important interests of that other Party. Such activities may include investigations that involve: anticompetitive business conduct, remedies and seeking of information in the territory of the other Party, as well as mergers and acquisitions in which a party to the transaction is a company of a Party controlling a company established in the territory of the other Party. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity within its territory.

3. If a Party considers that an anticompetitive business conduct carried out within the territory of the other Party has an appreciable adverse effect within its territory, it may request that the other Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive business conduct and its effect within the territory of the requesting Party, and shall include an offer of such further information and other cooperation as the requesting Party is able to provide

4. The requested Party shall carefully consider whether to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anti-competitive business conduct identified in the request. The requested Party shall advise the requesting Party of the outcome of the enforcement activities and, to the extent possible, of significant interim developments.

Article 53. Confidentiality

Nothing in this Chapter shall require a Party to provide information when this is contrary to its laws, including those regarding disclosure of information, confidentiality or business secrecy.

Article 54. Sub-committee on Competition

The Joint Committee may, if the need arises, establish a Sub-Committee on competition.

Article 55. Consultations

A Party may request consultations regarding any matter related to this Chapter. The request for consultations shall indicate the reasons for the request and whether any procedural time limit or other constraints require that consultations be expedited. Upon request of a Party, consultations shall promptly be held with a view to reaching a conclusion consistent with the objectives set forth in this Chapter. Any Party may request that consultations continue within the Joint Committee in order to obtain its recommendations in relation thereto.

Title V. GOVERNMENT PROCUREMENT

Article 56. Coverage

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement:

(a) by entities set out in Annex XII;

(b) of goods in accordance with Annex XIII, services in accordance with Annex XIV, or construction services in accordance with Annex XV; and

(c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold as set out in Annex XVI.

2. Paragraph 1 is subject to the provisions set out in Annex XVII.

3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter. 5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy. (10)

(10) Procurement does not include: (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or states and municipal governments; and (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

Article 57. National Treatment and Non-discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the products, services and suppliers of the other Party treatment no less favourable than that accorded to domestic products, services and suppliers.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall ensure:

(a) that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of the other Party; and

(b) that its entities do not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is the other Party.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

Article 58. Rules of Origin

No Party may apply rules of origin to goods imported from the other Party for purposes of government procurement covered by this Chapter that are different from, or inconsistent with, the rules of origin which that Party applies in the normal course of trade.

Article 59. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party, where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of either Party.

Article 60. Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to, or in the course of, its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

Article 61. Procurement Procedures and other Provisions

1. Mexico shall apply the rules and procedures specified in Part A of Annex XVIII and the EFTA States shall apply the rules and procedures specified in Part B of Annex XVIII. Both sets of rules and procedures are considered to provide equivalent treatment.

2. The rules and procedures specified in Annex XVIII may only be modified by the Party concerned in order to reflect amendments to the corresponding provisions of the North American Free Trade Agreement (hereinafter NAFTA) and the WTO Agreement on Government Procurement (hereinafter GPA), respectively, provided that the rules and procedures applied by that Party, as modified, continue to afford equivalent treatment.

3. The Party concerned shall notify the other Party of any modification to the rules and procedures specified in Annex XVIII no later than 30 days prior to their date of entry into force, and shall bear the burden of proving that the rules and procedures, as modified, continue to afford equivalent treatment.

4. Where a Party considers that such a modification affects access to the other Party's procurement market considerably, it can request consultations. If no satisfactory solution can be found the Party may have recourse to dispute settlement procedures under Chapter VIII, with a view to maintaining an equivalent level of access to the other Party's procurement market.

5. No entity of a Party may make it a condition for the qualification of suppliers and for the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

Article 62. Bid Challenge

1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Chapter shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days from that time.

6. A Party may require under its legislation that a challenge procedure be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-day period described in paragraph 5 shall begin no earlier than the date that the notice is published or the tender documentation is made available. Nothing in this provision precludes the right of interested suppliers to judicial review.

7. Challenges shall be heard by an impartial and independent reviewing authority with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedures which provide that:

(a) participants can be heard before an opinion is given or a decision is reached;

(b) participants can be represented and accompanied;

(c) participants shall have access to all proceedings;

(d) proceedings can take place in public;

(e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;

(f) witnesses can be presented; and

(g) documents are disclosed to the reviewing authority.

8. Challenge procedures shall provide for:

(a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;

(b) where appropriate, correction of the breach of this Chapter or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

9. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

Article 63. Provision of Information

1. Each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex XIX.

2. Each Party shall designate upon entry into force of this Agreement one or more contact points to:

(a) facilitate communication between the Parties;

(b) answer all reasonable inquiries from the other Party to provide relevant information on matters covered by this Chapter; and

(c) on request of a supplier of a Party, provide in writing within a reasonable time period a reasoned answer to the supplier and the other Party as to whether a specific entity is covered by this Chapter.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party, except after consultation with, and agreement of, the Party that provided the information.

4. Upon request, each Party shall provide to the other Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorisation of the person that provided the information to that Party.

6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. Each Party shall collect and exchange on an annual basis statistics on its procurements covered by this Chapter (11). Such reports shall comply with the requirements of Annex XX.

(11) The first exchange of information under paragraph 7 of Article 63 (Provision of Information) will take place two years after the entry into force of this Agreement. In the meantime, the Parties will communicate to each other all available and comparable relevant data on a reciprocal basis.

Article 64. Technical Co-operation

1. The Parties shall co-operate to increase the understanding of their respective government procurement systems, with a view to maximising the access to government procurement opportunities for the suppliers of both Parties.

2. Each Party shall take reasonable measures to provide to the other Party and to the suppliers of the other Party, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system.

Article 65. Exceptions

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining measures:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

Article 66. Privatisation of Entities

1. Where a Party wishes to withdraw an entity from Section 2 of Annex XII.A or XII.B, as appropriate, on the grounds that government control over it has been effectively eliminated, that Party shall notify the other Party. (12)

2. Where a Party objects to the withdrawal on the grounds that the entity remains subject to government control, the Parties will enter into consultations to restore the balance of their offers. If no satisfactory solution can be reached, the claiming Party may have recourse to dispute settlement procedures under Chapter VIII.

(12) Where both Parties have adopted rules that allow a covered entity to derogate from procurement procedures if such entity intends to purchase exclusively to enable it to provide goods or services where other market participants are free to offer the same goods or services in the same geographical area and under substantially the same conditions, the Parties shall review the wording of this provision accordingly. In case Article XXIV:6(b) of the GPA or Article 1023 of NAFTA is amended, the Parties shall review the wording of this provision accordingly. The amended provision of the GPA or NAFTA shall not apply between the Parties until it has been incorporated in accordance with this paragraph.

Article 67. Further Negotiations

In the case that the EFTA States or Mexico offer, after the entry into force of this Agreement, a GPA or NAFTA Party, respectively, additional advantages with regard to the access to their respective procurement markets beyond what has been agreed under this Chapter, they shall agree to enter into negotiations with the other Party with a view to extending these advantages to the other Party on a reciprocal basis.

Article 68. Other Provisions

1. The Joint Committee may adopt appropriate measures to enhance the conditions for effective access to a Party's covered procurement or, as the case may be, adjust a Party's coverage so that such conditions for effective access are maintained on an equitable basis.

2. The EFTA States shall provide to Mexico, at the entry into force of this Agreement, an indicative list of 40 public authorities or public undertakings covered by Annex XII.B.2. The entities contained in this list shall be representative of the coverage offered under that Section in terms of geographical location and sectorial distribution.

Title VI. INTELLECTUAL PROPERTY

Article 69. Protection of Intellectual Property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Article and Annex XXI.

2. The Parties shall accord to each others' nationals treatment not less favourable than that they accord to their own nationals. Exemptions from this obligation shall be in accordance with the substantive provisions of Article 3 of the

Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS Agreement).

3. The Parties shall grant to each others' nationals treatment not less favourable than that accorded to nationals of any other State. Exemptions from this obligation shall be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.

4. Upon request of any Party, the Joint Committee shall hold consultations on issues concerning the protection of intellectual property rights, with a view to reaching mutually satisfactory solutions to difficulties that may arise in this context. For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights.

Title VII. INSTITUTIONAL PROVISIONS

Article 70. The Joint Committee

1. The Parties hereby establish the EFTA-Mexico Joint Committee comprising of representatives of each Party.

2. The Joint Committee shall:

(a) supervise the implementation of this Agreement;

(b) keep under review the possibility of further removal of barriers to trade and other restrictive regulations of commerce between the EFTA States and Mexico;

(c) oversee the further elaboration of this Agreement;

(d) supervise the work of all sub-committees and working groups established under this Agreement;

(e) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement, and

(f) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks. Except where specifically provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee.

4. The Joint Committee may take decisions as provided in this Agreement. On other matters the Joint Committee may make recommendations.

5. The Joint Committee shall take decisions by consensus.

6. The Joint Committee shall normally convene once a year in a regular meeting. The regular meetings of the Joint Committee shall be chaired jointly by one of the EFTA Parties and Mexico. The Joint Committee shall establish its rules of procedure.

7. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

8. The Joint Committee may decide to amend the Annexes and the Appendices to this Agreement. Subject to paragraph 9, it may set a date for the entry into force of such decisions.

9. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of constitutional requirements, the decision shall enter into force on the date that the last Party notifies that its internal requirements have been fulfilled, unless the decision itself specifies a later date. The Joint Committee may decide that the decision shall enter into force for those Parties that have fulfilled their internal requirements, provided that Mexico is one of those Parties. A Party may apply a decision of the Joint Committee provisionally until such decision enters into force, subject to its constitutional requirements.

Title VIII. DISPUTE SETTLEMENT

Article 71. Scope

1 The provisions of this Chapter shall apply to any matter arising from this Agreement, unless otherwise specified in this

Agreement.

2. The provisions on arbitration shall not apply to Articles 9 to 13, 16, 26, 48, 50, 51 to 55 and 69.

Article 72. Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Mexico may request in writing consultations with any other Party, and any EFTA State may request in writing consultations with Mexico, regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing thereof and supply all relevant information.

3. If any of the Parties so requests within 10 days from the receipt of the notification referred to in paragraph 2, the consultations shall take place in the Joint Committee, with a view to finding an acceptable solution.

4. Consultations shall commence within 30 days from the date of receipt of the request for consultations.

Article 73. Establishment of an Arbitration Panel

1. In case a Party considers that a measure applied by another Party violates the Agreement and the matter has not been resolved within 45 days after consultations have been held pursuant to Article 72, such matter may be referred to arbitration by one or more Parties to the dispute by means of a written notification addressed to the Party complained against. A copy of this notification shall be communicated to all Parties to this Agreement so that each may determine whether it has a substantial interest in the matter. Where more than one Party requests the submission to an arbitration panel of a dispute with the same Party relating to the same question a single arbitration panel should be established to consider such disputes whenever feasible.

2. A Party to this Agreement which is not a Party to the dispute, on delivery of a written notice to the disputing Parties, shall be entitled to make written submissions to the arbitration panel, receive written submissions of the disputing Parties, attend all hearings and make oral submissions.

Article 74. Appointment of Arbitrators

1. The arbitration panel shall comprise three members, unless the Parties to the dispute decide otherwise.

2. In the written notification pursuant to Article 73 of this Agreement, the Party or the Parties referring the dispute to arbitration shall designate one member of the arbitration panel, who may be a national of such Party or Parties.

3. Within 15 days from the receipt of the notification referred to in paragraph 2, the Party or the Parties to which it was addressed shall, in turn, designate one member, who may be a national of such Party or Parties.

4. Within 30 days from the receipt of the notification referred to in paragraph 2, the Parties to the dispute shall agree on the designa tion of the third member. The third member shall not be a national of any Party, nor permanently reside in the territory of any Party. The member thus appointed shall be the President of the arbitration panel.

5. If all three members have not been designated or appointed within 30 days from the receipt of the notification referred to in paragraph 2, the necessary designations shall be made, at request of any Party to the dispute, by the Director-General of the WTO within a further 30 days.

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

Article 75. Panel Reports

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

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

report. A copy of the final report shall be communicated to the Parties to this Agreement.

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

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

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

Article 76. Implementation of Panel Reports

1. The final report shall be final and binding on the Parties to the dispute. Each Party to the dispute shall be bound to take the measures involved in carrying out the final report referred to in Article 75.

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

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

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

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

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

7. In considering what benefits to suspend, the complaining Party or Parties should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to violate this Agreement. The complaining Party or Parties that consider it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

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

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

10. At the request of any of the Parties to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

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

Article 77. Choice of Forum

1. Subject to paragraph 2, any dispute regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in either forum at the discretion of the complaining Party.

2. Before an EFTA State initiates a dispute settlement proceeding against Mexico or Mexico initiates a dispute settlement proceeding against any EFTA State in the WTO on grounds that are substantially equivalent to those available to the Party concerned under this Agreement, that Party shall notify the other Parties of its intention. If another Party wishes also to have recourse to dispute settlement procedures as a complainant under this Agreement regarding the same matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute shall be settled under this Agreement.

3. Once dispute settlement procedures have been initiated under this Agreement pursuant to Article 73 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

4. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel, such as under Article 6 of the Dispute Settlement Understanding.

Article 78. General Provisions

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

2. Unless the Parties to the dispute otherwise agree, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure which shall be adopted at the first meeting of the Joint Committee.

Title IX. FINAL CLAUSES

Article 79. Transparency

1. The Parties shall publish their laws, or otherwise make publicly available their laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as the international agreements which may affect the operation of the Agreement.

2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.

Article 80. Annexes

The Annexes and Appendices thereto constitute an integral part of this Agreement.

Article 81. Amendments

1. Amendments to this Agreement shall after approval by the Joint Committee be submitted to the Parties for ratification, acceptance or approval, subject to each Parties constitutional requirements.

2. Unless the Joint Committee decides otherwise, the amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.

3. The text of the amendments as well as the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 84. Additional Parties

Any State may, upon invitation by the Joint Committee, become a Party to this Agreement. The terms and conditions of the participation by the additional Party shall be the subject of an agreement between the Parties and the invited State.

Article 83. Withdrawal and Termination

1. Any Party to this Agreement may withdraw therefrom by means of a written notification to the Depositary. The withdrawal shall take effect on the first day of the sixth month after the date on which the notification was received by the Depositary.

2. If one of the EFTA States withdraws from this Agreement, a meeting of the remaining Parties shall be convened to discuss the issue of the continued existence of this Agreement.

Article 84. Entry Into Force

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 July 2001 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Mexico is among the States that have deposited their instruments of ratification or acceptance.

3. In relation to a Signatory State depositing its instrument of ratification or acceptance after 1 July 2001, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Mexico this Agreement enters into force at the latest on the same date.

4. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 July 2001. Provisional application of this Agreement shall be notified to the Depositary. Depositary The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Mexico City, this 27th day of November 2000, in two original copies in the English and the Spanish languages, both texts being equally authentic. In case of conflict the English version shall prevail. One original for each language shall be deposited with the Government of Norway.