THE DOMINICAN REPUBLIC - CENTRAL AMERICA - UNITED STATES FREE TRADE AGREEMENT

The Government of the Republic of Costa Rica, the Government of the Dominican Republic, the Government of the Republic of El Salvador, the Government of the Republic of Guatemala, the Government of the Republic of Honduras, the Government of the Republic of Nicaragua, and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations and promote regional economic integration;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories while recognizing the differences in their levels of development and the size of their economies;

AVOID distortions to their reciprocal trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment; BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation;

SEEK to facilitate regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

PROMOTE transparency and eliminate bribery and corruption in international trade and investment;

CREATE new opportunities for economic and social development in the region;

PROTECT, enhance, and enforce basic workers' rights and strengthen their cooperation on labor matters;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

BUILD on their respective international commitments on labor matters;

IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters;

PROTECT and preserve the environment and enhance the means for doing so, including through the conservation of natural resources in their respective territories;

PRESERVE their flexibility to safeguard the public welfare;

RECOGNIZE the interest of the Central American Parties in strengthening and deepening their regional economic integration; and

CONTRIBUTE to hemispheric integration and provide an impetus toward establishing the Free Trade Area of the Americas;

HAVE AGREED as follows:

Chapter One. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment, and transparency, are to:

(a) encourage expansion and diversification of trade between the Parties;

(b) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

(c) promote conditions of fair competition in the free trade area; (d) substantially increase investment opportunities in the territories of the Parties;

(e) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

(f) create effective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes; and

(g) establish a framework for further bilateral, regional, and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article 1.3. Relation to other Agreements

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

2. For greater certainty, nothing in this Agreement shall prevent the Central American Parties from maintaining their existing legal instruments of Central American integration, adopting new legal instruments of integration, or adopting measures to strengthen and deepen these instruments, provided that such instruments and measures are not inconsistent with this Agreement.

Article 1.4. Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state governments.

Chapter Two. General Definitions

Article 2.1. Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

Central America means the Republics of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua;

central level of government means:

(a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, the national level of government; and

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

Commission means the Free Trade Commission established under Article 19.1 (The Free Trade Commission);

covered investment means, with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

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

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) antidumping or countervailing duty that is applied pursuant to a Partyâs domestic law; or

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

Customs Valuation Agreement means the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,

days means calendar days;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

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

GATS means the WTO General Agreement on Trade in Services;

GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994;

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

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

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

measure includes any law, regulation, procedure, requirement, or practice;

national means a natural person who has the nationality of a Party according to Annex 2.1 ora permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures);

Party means any State for which this Agreement is in force; person means a natural person or an enterprise; person of a Party means a national or an enterprise of a Party;

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

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

regional level of government means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, "regional level of government" is not applicable;

Safeguards Agreement means the WTO Agreement on Safeguards;

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

SPS Agreement means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;

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

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

territory means for a Party the territory of that Party as set out in Annex 2.1;

TRIPS Agreement means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights;

WTO means the World Trade Organization; and

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

Annex 2.1. Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

natural person who has the nationality of a Party means:

(a) with respect to Costa Rica, a costarricense as defined in Articles 13 and 14 of the Constitución Politica de la República de Costa Rica;

(b) with respect to the Dominican Republic, a dominicano as defined in Article 11 of the Constitución de la República Dominicana;

(c) with respect to El Salvador, a salvadoreño as defined in Articles 90 and 92 of the Constitución de la República de El Salvador;

(d) with respect to Guatemala, a guatemalteco as defined in Articles 144, 145 and 146 of the Constitución de la República de Guatemala;

(e) with respect to Honduras, a hondureño as defined in Articles 23 and 24 of the Constitución de la República de Honduras;

(f) with respect to Nicaragua, a nicaragüense as defined in Article 15 of the Constitución Politica de la República de Nicaragua; and

(g) with respect to the United States, "national of the United States" as defined in the existing provisions of the Immigration and Nationality Act; and

territory means:

(a) with respect to Costa Rica, the land, maritime, and air space under its sovereignty (1) and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(b) with respect to the Dominican Republic, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(c) with respect to El Salvador, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(d) with respect to Guatemala, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(e) with respect to Honduras, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(f) with respect to Nicaragua, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(g) with respect to the United States,

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

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

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(1) For greater certainty, the territory of Costa Rica includes Coco Island.

Chapter Three. National Treatment and Market Access for Goods

Article 3.1. Scope and Coverage

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

Section A. National Treatment

Article 3.2. National Treatment

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

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

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.2.

Section B. Tariff Elimination

Article 3.3. Tariff Elimination

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

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with Annex 3.3.(1)

3. For greater certainty, paragraph 2 shall not prevent a Central American Party from providing identical or more favorable tariff treatment to a good as provided for under the legal instruments of Central American integration, provided that the good meets the rules of origin under those instruments.

4. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 3.3. Notwithstanding Article 19.1.3(b) (The Free Trade Commission), an agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 3.3 for such good when approved by each such Party in accordance with its applicable legal procedures. Promptly after two or more Parties conclude an agreement under this paragraph they shall notify the other Parties of the terms of that agreement.

5. For greater certainty, a Party may:

(a) raise a customs duty back to the level established in its Schedule to Annex 3.3 following a unilateral reduction; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

6. Annex 3.3.6 applies to the Parties specified in that Annex.

(1) For greater certainty, except as otherwise provided in this Agreement, each Central American Party and the Dominican Republic shall provide that any originating good is entitled to the tariff treatment for the good set out in its Schedule to Annex 3.3, regardless of whether the good is imported into its territory from the territory of the United States or any other Party. An originating good may include a good produced

in a Central American Party or the Dominican Republic with materials from the United States.

Section C. Special Regimes

Article 3.4. Waiver of Customs Duties

1. No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3, Costa Rica, the Dominican Republic, El Salvador, and Guatemala may each maintain existing measures inconsistent with paragraphs 1 and 2, provided it maintains such measures in accordance with Article 27.4 of the SCM Agreement. Costa Rica, the Dominican Republic, El Salvador, and Guatemala may not maintain any such measures after December 31, 2009.

4. Nicaragua and Honduras may each maintain measures inconsistent with paragraphs 1 and 2 for such time as it is an Annex VII country for purposes of the SCM Agreement. Thereafter, Nicaragua and Honduras shall maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

Article 3.5. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a business person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for temporary admission beyond the period initially fixed.

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

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

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

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification when exported;

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

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

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

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that

national or resident.

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

7. Each Party shall provide that its customs authority or other competent authority shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on presentation of satisfactory proof to the importing Party's customs authority that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):

(a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

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

(d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

9. For purposes of paragraph 8, vehicle means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 3.6. Goods Re-entered after Repair or Alteration

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

2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

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

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

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

Article 3.7. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

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

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

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

Section D. Non-Tariff Measures

Article 3.8. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of

the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, mutatis mutandis. (2)

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

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

(b) import licensing conditioned on the fulfillment of a performance requirement, except as provided in a Party's Schedule to Annex 3.3; or

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

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

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

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

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

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.2.

6. Neither a Central American Party nor the Dominican Republic may, as a condition for engaging in importation or for the import of a good, require a person of another Party to establish or maintain a contractual or other relationship with a dealer in its territory.

7. Neither a Central American Party nor the Dominican Republic may remedy a violation or alleged violation of any law, regulation, or other measure regulating or otherwise relating to the relationship between any dealer in its territory and any person of another Party, by prohibiting or restricting the importation of any good of another Party.

8. For purposes of this Article:

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

remedy means to obtain redress or impose a penalty, including through a provisional, precautionary, or permanent measure.

(2) For greater certainty, this paragraph applies, inter alia, to prohibitions or restrictions on the importation of remanufactured goods.

Article 3.9. Import Licensing

1. No Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after entry into force of this Agreement, each Party shall notify the other Parties of any existing import licensing procedures, and thereafter shall notify the other Parties of any new import licensing procedure and any modification to its existing import licensing procedures, within 60 days before it takes effect. A notification provided under this Article shall:

(a) include the information specified in Article 5 of the Import Licensing Agreement; and

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

3. No Party may apply an import licensing procedure to a good of another Party unless it has provided notification in accordance with paragraph 2.

Article 3.10. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VII:1 of the GATT 1994 and its interpretive notes, that all fees and

charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article 1:2 of the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of another Party.

3. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

4. The United States shall eliminate its merchandise processing fee on originating goods.

Article 3.11. Export Taxes

Except as provided in Annex 3.11, no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless such duty, tax, or charge is adopted or maintained on any such good:

(a) when exported to the territories of all other Parties; and

(b) when destined for domestic consumption.

Section E. Other Measures

Article 3.12. Distinctive Products

1. Each Central American Party and the Dominican Republic shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, those Parties shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. At the request of a Party, the Committee on Trade in Goods shall consider whether to recommend that the Parties amend the Agreement to designate a good as a distinctive product for purposes of this Article.

Section F. Agriculture

Article 3.13. Administration and Implementation of Tariff-Rate Quotas

1. Each Party shall implement and administer the tariff-rate quotas for agricultural goods set out in Appendix I or, if applicable, Appendix II or III to its Schedule to Annex 3.3 (hereafter “TRQs”) in accordance with Article XIII of the GATT 1994, including its interpretive notes, and the Import Licensing Agreement.

2. Each Party shall ensure that:

(a) its procedures for administering its TRQs are transparent, made available to the public, timely, nondiscriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end user preferences;

(b) any person of a Party that fulfills the Party's legal and administrative requirements shall be eligible to apply and to be considered for an import license or quota allocation under the Party's TRQs;

(c) it does not allocate any portion of a quota to an industry association or non- y Ps q y governmental organization, except as otherwise provided in this Agreement;

(d) solely government authorities administer its TRQs, except as otherwise provided in this Agreement; and

(e) it allocates quotas under its TRQs in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request.

3. Each Party shall strive to administer its TRQs in a manner that allows importers to fully utilize import quotas.

4. No Party may condition application for, or utilization of, import licenses or quota allocations under its TRQs on the re-export of an agricultural good.

5. No Party may count food aid or other non-commercial shipments in determining whether an import quota under its TRQs has been filled.

6. On request of any Party, an importing Party shall consult with the requesting Party regarding the administration of its TRQs.

Article 3.14. Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. Except as provided in paragraph 3, no Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of another Party.

3. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any subsidy to its exports of the good to the territory of the importing Party. If the importing Party does not adopt the agreed-on measures, the exporting Party may apply an export subsidy on its exports of the good to the territory of the importing Party only to the extent necessary to counter the trade-distorting effect of subsidized exports of the good from the non- Party to the importing Party's territory.

Article 3.15. Agricultural Safeguard Measures

1. Notwithstanding Article 3.3, each Party may apply a measure in the form of an additional import duty on an agricultural good listed in that Party's Schedule to Annex 3.15, provided that the conditions in paragraphs 2 through 7 are met. The sum of any such additional import duty and any other customs duty on such good shall not exceed the lesser of:

(a) the prevailing most-favored-nation (MFN) applied rate of duty; or

(b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. A Party may apply an agricultural safeguard measure during any calendar year if the quantity of imports of the good during such year exceeds the trigger level for that good set out in its Schedule to Annex 3.15.

3. The additional duty under paragraph 1 shall be set according to each Partyâs Schedule to Annex 3.15.

4. No Party may apply an agricultural safeguard measure and at the same time apply or maintain:

(a) a safeguard measure under Chapter Eight (Trade Remedies); or

(b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement; with respect to the same good. 5. No Party may apply or maintain an agricultural safeguard measure:

(a) on or after the date that a good is subject to duty-free treatment under the Partyâs Schedule to Annex 3.3; or

(b) that increases the in-quota duty on a good subject to a TRQ.

6. Each Party shall implement an agricultural safeguard measure in a transparent manner. Within 60 days after applying a measure, a Party shall notify any Party whose good is subject to the measure, in writing, and shall provide it relevant data concerning the measure. On request, the Party applying the measure shall consult with any Party whose good is subject to the measure regarding application of the measure.

7. A Party may maintain an agricultural safeguard measure only until the end of the calendar year in which the Party applies the measure.

8. The Commission and the Committee on Agricultural Trade may review the implementation and operation of this Article.

9. For purposes of this Article and Annex 3.15, agricultural safeguard measure means a measure described in paragraph 1.

Article 3.16. Sugar Compensation Mechanism

1. In any year, the United States may, at its option, apply a mechanism that results in compensation to a Partyâs exporters of

sugar goods in lieu of according duty-free treatment to some or all of the duty-free quantity of sugar goods established for that Party in Appendix I to the Schedule of the United States to Annex 3.3. Such compensation shall be equivalent to the estimated economic rents that the Partyâs exporters would have obtained on exports to the United States of any such amounts of sugar goods and shall be provided within 30 days after the United States exercises this option. The United States shall notify the Party at least 90 days before it exercises this option and, on request, shall enter into consultations with the Party regarding application of the mechanism.

2. For purposes of this Article, sugar good means a good provided for in the subheadings listed in subparagraph 3(c) of Appendix I to the Schedule of the United States to Annex 3.3.

Article 3.17. Consultations on Trade In Chicken

The Parties shall consult on, and review the implementation and operation of the Agreement as it relates to, trade in chicken in the ninth year after the date of entry into force of this Agreement.

Article 3.18. Agriculture Review Commission

The Parties shall establish an Agriculture Review Commission in the 14th year after the date of entry into force of this Agreement to review the implementation and operation of the Agreement as it relates to trade in agricultural goods. The Agriculture Review Commission shall evaluate the effects of trade liberalization under the Agreement, the operation of Article 3.15 and possible extension of agricultural safeguard measures under that Article, progress toward global agricultural trade reform in the WTO, and developments in world agricultural markets. The Agriculture Review Commission shall report its findings and any recommendations to the Commission.

Article 3.19. Committee on Agricultural Trade

1. Not later than 90 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee shall provide a forum for:

(a) monitoring and promoting cooperation on the implementation and administration of this Section;

(b) consultation between the Parties on matters related to this Section in coordination with other committees, subcommittees, working groups, or other bodies established under this Agreement; and

(c) undertaking any additional work that the Commission may assign.

3. The Committee shall meet at least once a year unless it decides otherwise. Meetings of the Committee shall be chaired by the representatives of the Party hosting the meeting.

4. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

Section G. Textiles and Apparel

Article 3.20. Refund of Customs Duties

1. On request of an importer, a Party shall refund any excess customs duties paid in connection with the importation into its territory of an originating textile or apparel good between January 1, 2004 and the date of entry into force of this Agreement for that Party. For purposes of applying this Article, the importing Party shall consider a good to be originating if the Party would have considered the good to be originating had it been imported into its territory on the date of entry into force of this Agreement for that Party.

2. Paragraph 1 shall not apply with respect to textile or apparel goods imported into, or imported from, the territory of a Party if it provides written notice to the other Parties by no later than 90 days before the date of entry into force of this Agreement for that Party that it will not comply with paragraph 1.

3. Notwithstanding paragraph 2, paragraph 1 shall apply with respect to textile or apparel goods imported from the territory of a Party if it provides written notice to the other Parties by no later than 90 days before the date of entry into force of this Agreement for that Party that it shall provide a benefit for textile or apparel goods imported into its territory that the importing and exporting Parties have agreed is equivalent to the benefit provided in paragraph 1.

4. This Article shall not apply to a textile or apparel good that qualifies for preferential tariff treatment under Article 3.21, 3.27, or 3.28.

Article 3.21. Duty-Free Treatment for Certain Goods

1. An importing and an exporting Party may identify at any time particular textile or apparel goods of the exporting Party that they mutually agree fall within:

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

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

(c) traditional folklore handicraft goods.

2. The importing Party shall grant duty-free treatment to goods so identified, if certified by the competent authority of the exporting Party.

Article 3.22. Elimination of Existing Quantitative Restrictions

Not later than the date of entry into force of this Agreement, the United States shall eliminate the existing quantitative restrictions it maintains under the Agreement on Textiles and Clothing as set out in Annex 3.22.

Article 3.23. Textile Safeguard Measures

1. Subject to the following paragraphs, and during the transition period only, if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good of another Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to prevent or remedy such damage and to facilitate adjustment, apply a textile safeguard measure to that good, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

(a) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is applied; and

(b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the importing Party: 3-13

(a) shall examine the effect of increased imports of the good of the other Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which, either alone or combined with other factors, shall necessarily be decisive; and

(b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may apply a textile safeguard measure only following an investigation by its competent authority.

4. If, on the basis of the results of the investigation under paragraph 3, the importing Party intends to apply a textile safeguard measure, the importing Party shall promptly provide written notice to the exporting Party of its intent to apply a textile safeguard measure, and on request shall enter into consultations with that Party. The importing Party and the exporting Party shall begin the consultations without delay and shall complete them within 60 days of the date of receipt of the request. The importing Party shall make a decision on whether to apply a safeguard measure within 30 days of completion of the consultations.

5. The following conditions and limitations apply to any textile safeguard measure:

(a) no Party may maintain a textile safeguard measure for a period exceeding three years;

(b) no Party may apply a textile safeguard measure to the same good of another Party more than once;

(c) on termination of the textile safeguard measure, the Party applying the measure shall apply the rate of duty set out in its Schedule to Annex 3.3, as if the measure had never been applied; and

(d) no Party may maintain a textile safeguard measure beyond the transition period.

6. The Party applying a textile safeguard measure shall provide to the Party against whose good the measure is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the textile safeguard measure. Such concessions shall be limited to textile or apparel goods, unless the consulting Parties otherwise agree. If the consulting Parties are unable to agree on compensation within 30 days of application of a textile safeguard measure, the Party against whose good the measure is taken may take tariff action having trade effects substantially equivalent to the trade effects of the textile safeguard measure. Such tariff action may be taken against any goods of the Party applying the measure. The Party taking the tariff action shall apply such action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Partyâs right to take tariff action shall terminate when the textile safeguard measure terminates.

7. (a) Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.

(b) No Party may apply, with respect to the same good at the same time, a textile safeguard measure and:

(i) a safeguard measure under Chapter Eight (Trade Remedies); or

(ii) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 3.24. Customs Cooperation (3)

(3) Paragraphs 2, 3, 4, 6, and 7 of this Article shall not apply between the Central American Parties or between any Central American Party and the Dominican Republic.

1. The Customs Authorities of the Parties shall cooperate for purposes of:

(a) enforcing or assisting in the enforcement of their respective laws, regulations, and procedures affecting trade in textile or apparel goods;

(b) ensuring the accuracy of claims of origin for textile or apparel goods; and

(c) deterring circumvention of laws, regulations, and procedures of any Party or international agreements affecting trade in textile or apparel goods.

2. (a) On the written request of an importing Party, an exporting Party shall conduct a verification for purposes of enabling the importing Party to determine:

(i) that a claim of origin for a textile or apparel good is accurate, or

(ii) that the exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including:

(A) laws, regulations, and procedures that the exporting Party adopts and maintains pursuant to this Agreement; and

(B) laws, regulations, and procedures of the importing Party and the exporting Party implementing other international agreements regarding trade in textile or apparel goods.

(b) A request under subparagraph (a) shall include specific information regarding the reason the importing Party is requesting the verification and the determination the importing Party is seeking to make.

(c) The exporting Party shall conduct a verification under subparagraph (a)(i), regardless of whether an importer claims preferential tariff treatment for the textile or apparel good for which a claim of origin has been made.

3. The importing Party, through its competent authority, may assist in a verification conducted under paragraph 2(a), or, at the request of the exporting Party, undertake such a verification, including by conducting, along with the competent authority of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from the territory of the exporting Party to the territory of the importing Party.

4. (a) The competent authority of the importing Party shall provide a written request to the competent authority of the exporting Party 20 days before the proposed date of a visit under paragraph 3. The request shall identify the competent

authority making the request, the names and titles of the authorized personnel that will conduct the visit, the reason for the visit, including a description of the type of goods that are the subject of the verification, and the proposed dates of the visit.

(b) The competent authority of the exporting Party shall respond within 10 days of receipt of the request, and shall indicate the date on which authorized personnel of the importing Party may perform the visit. The exporting Party shall seek, in accordance with its laws, regulations, and procedures, permission from the enterprise to conduct the visit. If consent is not provided, the importing Party may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification, except that the importing Party may not deny preferential tariff treatment to such goods based solely on a postponement of the visit, if there is adequate reason for such postponement.

(c) Authorized personnel of the importing and exporting Parties shall conduct the visit in accordance with the laws, regulations, and procedures of the exporting Party.

(d) On completion of a visit, the importing Party shall provide the exporting Party with an oral summary of the results of the visit and provide it with a written report of the results of the visit within approximately 45 days of the visit. The written report shall include:

(i) the name of the enterprise visited;

(ii) particulars of the shipments that were checked;

(iii) observations made at the enterprise relating to circumvention; and

(iv) an assessment of whether the enterprise's production records and other documents support its claims for preferential tariff treatment for:

(A) a textile or apparel good subject to a verification conducted under paragraph 2(a)(i); or

(B) in the case of a verification conducted under paragraph 2(a)(ii), any textile or apparel good exported or produced by the enterprise.

5. On request of a Party conducting a verification under paragraph 2(a), a Party shall provide, consistent with its laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct the verification. Where the providing Party designates the information as confidential, Article 5.6 (Confidentiality) shall apply. Notwithstanding the foregoing, a Party may publish the name of an enterprise that:

(a) the Party has determined to be engaged in intentional circumvention of laws, regulations, and procedures of any Party or international agreements affecting trade in textile or apparel goods; or

(b) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

6. (a) During a verification conducted under paragraph 2(a), if there is insufficient information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include suspending the application of such treatment to:

(A) in the case of a verification conducted under paragraph 2(a)(i), the textile or apparel good for which a claim for preferential tariff treatment has been made; and

(B) in the case of a verification conducted under paragraph 2(a)(ii), any textile or apparel good exported or produced by the enterprise subject to that verification for which a claim for preferential tariff treatment has been made.

(i) On completion of a verification conducted under paragraph 2(a), if there is insufficient information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(ii) During or on completion of a verification conducted under paragraph 2(a), if the importing Party discovers that an enterprise has provided incorrect information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(b) During a verification conducted under paragraph 2(a), if there is insufficient information to determine the country of origin, the importing Party may take appropriate action, which may include detention of any textile or apparel good exported or produced by the enterprise subject to the verification, but for no longer than the period permitted under its law.

(i) On completion of a verification conducted under paragraph 2(a), if there is insufficient information to determine the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(ii) During or on completion of a verification conducted under paragraph 2(a), if the importing Party discovers that an enterprise has provided incorrect information as to the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(c) The importing Party may continue to take appropriate action under any provision of this paragraph only until it receives information sufficient to enable it to make the determination in paragraph 2(a)(i) or (ii), as the case may be, but in any event for no longer than the period permitted under its law.

(d) The importing Party may deny preferential tariff treatment or entry under this paragraph only after providing a written determination to the importer of the reason for the denial.

7. Not later than 45 days after it completes a verification conducted under paragraph 2(a), the exporting Party shall provide the importing Party a written report on the results of the verification. The report shall include all documents and facts supporting any conclusion that the exporting Party reaches. After receiving the report, the importing Party shall notify the exporting Party of any action it will take under paragraph 6(a)(ii) or (iii) or 6(b)(ii) or (iii), based on the information provided in the report.

8. On the written request of a Party, two or more Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise, or to discuss ways to improve customs cooperation, regarding the application of this Article. Unless the consulting Parties otherwise agree, consultations shall begin within 30 days after delivery of the request, and conclude within 90 days after delivery.

9. A Party may request technical or other assistance from any other Party in implementing this Article. The Party receiving such a request shall make every effort to respond favorably and promptly to it.

Article 3.25. Rules of Origin and Related Matters

Consultations on Rules of Origin

1. On request of a Party, the Parties shall, within 30 days after the request is delivered, consult on whether the rules of origin applicable to a particular textile or apparel good should be modified.

2. In the consultations referred to in paragraph 1, each Party shall consider all data that a Party presents demonstrating substantial production in its territory of the good. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.

3. The Parties shall endeavor to conclude the consultations within 90 days after delivery of the request. If the Parties reach an agreement to modify a rule of origin for a particular good, the agreement shall supersede that rule of origin when approved by the Parties in accordance with Article 19.1.3(b) (The Free Trade Commission).

Fabrics, Yarns, and Fibers Not Available in Commercial Quantities

4. (a) At the request of an interested entity, the United States shall, within 30 business days of receiving the request, add a fabric, fiber, or yarn in an unrestricted or restricted quantity to the list in Annex 3.25, if the United States determines, based on information supplied by interested entities, that the fabric, fiber, or yarn is not available in commercial quantities in a timely manner in the territory of any Party, or if no interested entity objects to the request.

(b) If there is insufficient information to make the determination in subparagraph (a), the United States may extend the period within which it must make that determination by no more than 14 business days, in order to meet with interested entities to substantiate the information.

(c) If the United States does not make the determination in subparagraph (a) within 15 business days of the expiration of the period within which it must make that determination, as specified in subparagraph (a) or (b), the United States shall grant the request.

(d) The United States may, within six months after adding a restricted quantity of a fabric, fiber, or yarn to the list in Annex 3.25 pursuant to subparagraph (a), eliminate the restriction.

(e) If the United States determines before the date of entry into force of this Agreement that any fabrics or yarns not listed in

Annex 3.25 are not available in commercial quantities in the United States pursuant to section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. Â§ 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), or section 213(b)(2)(A)(v)(ID of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(2)(A)(v)(ID), the United States shall add such fabrics or yarns in an unrestricted quantity to the list in Annex 3.25.

5. At the request of an interested entity made no earlier than six months after the United States has added a fabric, yarn, or fiber in an unrestricted quantity to Annex 3.25 pursuant to paragraph 4, the United States may, within 30 business days after it receives the request:

(a) delete the fabric, yarn, or fiber from the list in Annex 3.25; or

(b) introduce a restriction on the quantity of the fabric, yarn, or fiber added to Annex 3.25,

if the United States determines, based on the information supplied by interested entities, that the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the territory of any Party. Such deletion or restriction shall not take effect until six months after the United States publishes its determination.

6. Promptly after the date of entry into force of this Agreement, the United States shall publish the procedures it will follow in considering requests under paragraphs 4 and 5.

De Minimis

7. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 (Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than ten percent of the total weight of that component. (4)

8. Notwithstanding paragraph 7, a good containing elastomeric yarns (5) in the component of the good that determines the tariff classification of the good shall originate only if such yarns are wholly formed in the territory of a Party. (6)

Treatment of Sets

9. Notwithstanding the specific rules of origin in Annex 4.1 (Specific Rules of Origin), textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System, shall not be regarded as originating goods unless each of the products in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the adjusted value of the set.

Treatment of Nylon Filament Yarn

10. A textile or apparel good that is not an originating good because certain yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 (Specific Rules of Origin), shall nonetheless be considered to be an originating good if the yarns are those described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(vi)(IV)).

(4) For greater certainty, when the good is a fiber, yarn, or fabric, the "component of the good that determines the tariff classification of the good" is all of the fibers in the yarn, fabric, or group of fibers.

(5) For greater certainty, the term "elastomeric yarns" does not include latex.

(6) For purposes of this paragraph, "wholly formed" means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

Article 3.26. Most-Favored-Nation Rates of Duty on Certain Goods

For a textile or apparel good provided for in chapters 61 through 63 of the Harmonized System that is not an originating good, the United States shall apply its MFN rate of duty only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States, and any other materials of U.S. origin used in the production of such a good, provided that the good is sewn or otherwise assembled in the territory of another Party or

Parties with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more Parties, or from components knit-to-shape in the United States, or both. (7)

(7) For purposes of this paragraph, "wholly formed," when used in reference to fabrics, means that all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States. The term "wholly formed," when used in reference to thread, means that all the production processes, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

Article 3.27. Preferential Tariff Treatment for Wool Apparel Goods Assembled In Costa Rica

Annex 3.27 sets out provisions applicable to certain apparel goods of Costa Rica.

Article 3.28. Preferential Tariff Treatment for Non-Originating Apparel Goods of Nicaragua

Annex 3.28 sets out provisions applicable to certain apparel goods of Nicaragua.

Article 3.29. Definitions

For purposes of this Section:

claim of origin means a claim that a textile or apparel good is an originating good or a good of a Party;

exporting Party means the Party from whose territory a textile or apparel good is exported; importing Party means the Party into whose territory a textile or apparel good is imported;

interested entity means a Party, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good;

textile or apparel good means a good listed in the Annex to the Agreement on Textiles and Clothing, except for those goods listed in Annex 3.29;

textile safeguard measure means a measure applied under Article 3.23.1; and

transition period means the five-year period beginning on the date of entry into force of this Agreement.

Section H. Institutional Provisions

Article 3.30. Committee on Trade In Goods

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

2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).

3. The Committee's functions shall include:

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration; and

(c) providing to the Committee on Trade Capacity Building advice and recommendations on technical assistance needs regarding matters relating to this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).

Section I. Definitions

Article 3.31. Definitions

For purposes of this Chapter:

AD Agreement means the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994;

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers, but not for broadcast to the general public;

Agreement on Textiles and Clothing means the WTO Agreement on Textiles and Clothing;

agricultural goods means those goods referred to in Article 2 of the WTO Agreement on Agriculture;

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

consular transactions means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippersâ export declarations, or any other customs documentation required on or in connection with importation; consumed means

(a) actually consumed; or

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

duty-free means free of customs duty;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO Agreement on Agriculture, including any amendment of that article;

goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

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

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

Import Licensing Agreement means the WTO Agreement on Import Licensing Procedures,

performance requirement means a requirement that:

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

(b) domestic goods or services of the Party granting a waiver of customs duties or import license be substituted for imported goods;

(c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

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

but does not include a requirement that:

(f) an imported good be subsequently exported;

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

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

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

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

SCM Agreement means the WTO Agreement on Subsidies and Countervailing Measures.

Chapter Four. Rules of Origin and Origin Procedures

Section A. Rules of Origin

Article 4.1. Originating Goods

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

(a) it is a good wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) it is produced entirely in the territory of one or more of the Parties and

(i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1, or

(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1,

and the good satisfies all other applicable requirements of this Chapter; or

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

Article 4.2. Regional Value Content

1. Where Annex 4.1 specifies a regional value content test to determine whether a good is originating, each Party shall provide that the importer, exporter, or producer may use a calculation of regional value content based on one or the other of the following methods:

(a) Method Based on Value of Non-Originating Materials ("Build-down Method")

RVC = AV - VNM / AV x 100

(b) Method Based on Value of Originating Materials ("Build-up Method")

RVC = VOM / AV x 100 where,

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value;

VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

2. Each Party shall provide that all costs considered for the calculation of regional value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

3. Where Annex 4.1 specifies a regional value content test to determine if an automotive good (1) is originating, each Party shall provide that the importer, exporter, or producer may use a calculation of the regional value content of that good as provided in paragraph 1 or based on the following method:

Method for Automotive Products ("Net Cost Method")

RVC = NC - VNM/NC x 100

where, RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self- produced.

4. Each Party shall provide that, for purposes of the regional value content method in paragraph 3, the importer, exporter, or producer may use a calculation averaged over the producer's fiscal year, using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other Parties:

(a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(c) the same model line of motor vehicles produced in the territory of a Party.

5. Each Party shall provide that, for purposes of calculating regional value content under paragraph 3 for automotive materials (2) produced in the same plant, an importer, exporter, or producer may use a calculation:

(a) averaged:

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over its fiscal year,

provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation;

(b) in which the average in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or

(c) in which the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of one or more of the Parties.

(1) Paragraph 3 applies solely to goods classified under the following headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

(2) Paragraph 5 applies solely to automotive materials classified under the following headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

Article 4.3. Value of Materials

Each Party shall provide that, for purposes of Articles 4.2 and 4.6, the value of a material shall be:

(a) for a material imported by the producer of the good, the adjusted value of the material;

(b) for a material acquired in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation; or

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

(i) all the expenses incurred in the production of the material, including general expenses, and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

Article 4.4. Further Adjustments to the Value of Materials

1. Each Party shall provide that, for originating materials, the following expenses, where not included under Article 4.3, may be added to the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more Parties to the location of the producer;

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

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

2. Each Party shall provide that, for non-originating materials, the following expenses, where included under Article 4.3, may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more Parties to the location of the producer;

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

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

(d) the cost of originating materials used in the production of the non-originating material in the territory of a Party.

Article 4.5. Accumulation

1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, shall be considered to originate in the territory of that other Party.

2. Each Party shall provide that a good is originating where the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 4.1 and all other applicable requirements in this Chapter.

Article 4.6. De Minimis

1. Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

2. With respect to a textile or apparel good, Article 3.25.7 (Rules of Origin and Related Matters) applies in place of paragraph 1.

Article 4.7. Fungible Goods and Materials

1. Each Party shall provide that an importer may claim that a fungible good or material is originating where the importer, exporter, or producer has:

(a) physically segregated each fungible good or material; or

(b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized

in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

Article 4.8. Accessories, Spare Parts, and Tools

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be treated as originating goods if the good is an originating good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and

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

2. If a good is subject to a regional value content requirement, the value of accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.9. Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.10. Packing Materials and Containers for Shipment

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

Article 4.11. Indirect Materials Used In Production

Each Party shall provide that an indirect material shall be considered to be an originating material without regard to where it is produced.

Article 4.12. Transit and Transshipment

Each Party shall provide that a good shall not be considered to be an originating good if the good:

(a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(b) does not remain under the control of customs authorities in the territory of a non- Party.

Article 4.13. Sets of Goods

1. Each Party shall provide that if goods are classified as a set as a result of the application of rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet all other applicable requirements in this Chapter.

2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non- originating goods in the set does not exceed 15 percent of the adjusted value of the set.

3. With respect to a textile or apparel good, Article 3.25.9 (Rules of Origin and Related Matters) applies in place of paragraphs 1 and 2.

Article 4.14. Consultation and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

2. A Party that considers that a specific rule of origin set out in Annex 4.1 requires modification to take into account developments in production processes, lack of supply of originating materials, or other relevant factors may submit a proposed modification along with supporting rationale and any studies to the Commission for consideration.

3. On submission by a Party of a proposed modification under paragraph 2, the Commission may tefer the matter to an ad hoc working group within 60 days or on such other date as the Commission may decide. The working group shall meet to consider the proposed modification within 60 days of the date of referral or on such other date as the Commission may decide.

4. Within such period as the Commission may direct, the working group shall provide a report to the Commission, setting out its conclusions and recommendations, if any.

5. On receipt of the report, the Commission may take appropriate action under Article 19.1.3(b) (The Free Trade Commission).

6. With respect to a textile or apparel good, paragraphs 1 through 3 of Article 3.25 (Rules of Origin and Related Matters) apply in place of paragraphs 2 through 5.

Section B. Origin Procedures

Article 4.15. Obligations Relating to Importations

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party issues a written determination that the claim is invalid as a matter of law or fact.

2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. No Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment if the importer:

(a) did not engage in negligence, gross negligence, or fraud in making the claim and pays any customs duty owing; or

(b) on becoming aware that such a claim is not valid, promptly and voluntarily corrects the claim and pays any customs duty owing.

4. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

(a) declare in the importation document that the good is originating; (b) have in its possession at the time the declaration referred to in subparagraph (a) is made a written or electronic certification as described in Article 4.16, if the certification forms the basis for the claim;

(c) provide a copy of the certification, on request, to the importing Party's customs authority, if the certification forms the basis for the claim;

(d) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing;

(e) when a certification by a producer or exporter forms the basis for the claim, either provide or have in place, at the importer's option, an arrangement to have the producer or exporter provide, on request of the importing Party's customs authority, all information relied on by such producer or exporter in making such certification; and

(f) demonstrate, on request of the importing Party's customs authority, that the good is originating under Article 4.1, including that the good satisfies the requirements of Article 4.12.

5. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties

paid as the result of the good not having been accorded preferential tariff treatment on presentation to its customs authority of:

(a) a written declaration, stating that the good was originating at the time of importation;

(b) on request of its customs authority, a copy of a written or electronic certification if a certification forms the basis for the claim, or other information demonstrating that the good was originating; and

(c) such other documentation relating to the importation of the good as its customs authority may require.

6. Each Party may provide that the importer is responsible for complying with the requirements of paragraph 4, notwithstanding that the importer may have based its claim for preferential tariff treatment on a certification or information that an exporter or producer provided.

7. Nothing in this Article shall prevent a Party from taking action under Article 3.24.6 (Customs Cooperation).

Article 4.16. Claims of Origin

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on either:

(a) a written or electronic (3) certification by the importer, exporter, or producer; or

(b) the importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good. (4)

2. Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:

(a) the name of the certifying person, including as necessary contact or other identifying information;

(b) tariff classification under the Harmonized System and a description of the good;

(c) information demonstrating that the good is originating;

(d) date of the certification; and

(e) in the case of blanket certification issued as set out in paragraph 4(b), the period that the certification covers.

3. Each Party shall provide that a certification by the producer or exporter of the good may be completed on the basis of:

(a) the producer's or exporter's knowledge that the good is originating; or

(b) in the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.

No Party may require an exporter or producer to provide a written or electronic certification to another person.

4. Each Party shall provide that a certification may apply to:

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

(b) multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of the certification.

5. Each Party shall provide that a certification shall be valid for four years after the date it was issued.

6. Each Party shall allow an importer to submit a certification in the language of the importing Party or the exporting Party. In the latter case, the customs authority of the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.

(3) Each Central American Party and the Dominican Republic shall authorize importers to provide electronic certifications beginning no later than three years after the date of entry into force of this Agreement.

(4) Each Central American Party and the Dominican Republic shall implement subparagraph (b) no later than three years after the date of entry into force of this Agreement.

Article 4.17. Exceptions

No Party may require a certification or information demonstrating that the good is originating where:

(a) the customs value of the importation does not exceed 1,500 U.S. dollars or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements; or

(b) it is a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

Article 4.18. Obligations Relating to Exportations

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 4.16 shall, on request, provide a copy to the appropriate authority of the Party;

(b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party is originating shall be subject to penalties equivalent to those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation, with appropriate modifications; and

(c) when an exporter or a producer in its territory has provided a certification and has reason to believe that the certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the certification of any change that could affect the accuracy or validity of the certification.

2. No Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

Article 4.19. Record Keeping Requirements

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 4.16 shall maintain, for a minimum of five years from the date the certification was issued, all records and documents necessary to demonstrate that a good for which the producer or exporter provided a certification was an originating good, including records and documents concerning:

(a) the purchase of, cost of, value of, and payment for, the exported good;

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

(c) the production of the good in the form in which it was exported.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a minimum of five years from the date of importation of the good, all records and documents necessary to demonstrate the good qualified for the preferential tariff treatment.

Article 4.20. Verification

1. For purposes of determining whether a good imported into its territory from the territory of another Party is an originating good, each Party shall ensure that its customs authority or other competent authority may conduct a verification by means of:

(a) written requests for information from the importer, exporter, or producer;

(b) written questionnaires to the importer, exporter, or producer;

(c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 4.19 or observe the facilities used in the production of the good, in accordance with the framework that the Parties

develop pursuant to Article 4.21.2;

(d) for a textile or apparel good, the procedures set out in Article 3.24 (Customs Cooperation); or

(e) such other procedures to which the importing and exporting Parties may agree. 2. A Party may deny preferential tariff treatment to an imported good where:

(a) the exporter, producer, or importer fails to respond to a written request for information or questionnaire within a reasonable period, as established in the importing Party's law;

(b) after receipt of a written notification for a verification visit to which the importing and exporting Parties have agreed, the exporter or producer does not provide its written consent within a reasonable period, as established by the importing Party's law; or

(c) the Party finds a pattern of conduct indicating that an importer, exporter, or producer has provided false or unsupported declarations that a good imported into its territory is an originating good.

3. Except as provided in Article 3.24.6(d) (Customs Cooperation), a Party conducting a verification shall provide the importer a determination, in writing, of whether the good is originating. The Partyâs determination shall include factual findings and the legal basis for the determination.

4. If an importing Party makes a determination under paragraph 3 that a good is not originating, the Party shall not apply that determination to an importation made before the date of the determination where:

(a) the customs authority of the exporting Party issued an advance ruling regarding the tariff classification or valuation of one or more materials used in the good under Article 5.10 (Advance Rulings);

(b) the importing Party's determination is based on a tariff classification or valuation for such materials that is different than that provided for in the advance ruling referred to in subparagraph (a); and

(c) the customs authority issued the advance ruling before the importing Partyâs determination.

5. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good imported into its territory is originating the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

Article 4.21. Common Guidelines

1. The Parties shall agree on and publish common guidelines for the interpretation, application, and administration of this Chapter and the relevant provisions of Chapter Three (National Treatment and Market Access for Goods) and shall endeavor to do so by the date of entry into force of this Agreement. The Parties may agree to modify the common guidelines.

2. The Parties shall endeavor to develop a framework for conducting verifications pursuant to Article 4.20.1(c).

Article 4.22. Definitions

For purposes of this Chapter:

adjusted value means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

class of motor vehicles means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in subheading 8701.20, motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06;

(b) motor vehicles provided for in subheading 8701.10 or subheadings 8701.30 through 8701.90;

(c) motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, and motor

vehicles of subheading 8704.21 or 8704.31; or

(d) motor vehicles provided for in subheadings 8703.21 through 8703.90;

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

Generally Accepted Accounting Principles means recognized consensus or substantial authoritative support given in the territory of a Party with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

good means any merchandise, product, article, or material;

goods wholly obtained or produced entirely in the territory of one or more of the Parties means:

(a) plants and plant products harvested or gathered in the territory of one or more of the Parties;

(b) live animals born and raised in the territory of one or more of the Parties;

(c) goods obtained in the territory of one or more of the Parties from live animals;

(d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;

(e) minerals and other natural resources not included in subparagraphs (a) through (d) extracted or taken from the territory of one or more of the Parties;

(f) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(g) goods produced on board factory ships from the goods referred to in subparagraph (f), provided such factory ships are registered or recorded with that Party and fly its flag;

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

(i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(j) waste and scrap derived from

(i) manufacturing or processing operations in the territory of one or more of the Parties, or

(ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials;

(k) recovered goods derived in the territory of one or more of the Parties from used goods, and utilized in the territory of one or more of the Parties in the production of remanufactured goods; and

(l) a goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

identical goods means "identical goods" as defined in the Customs Valuation Agreement; indirect material means a good used in the production, testing, or inspection of a good, but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

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

(g) catalysts and solvents; and

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

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

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

model line means a group of motor vehicles having the same platform or model name;

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

net cost of the good means the net cost that can be reasonably allocated to the good under one of the following methods:

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

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

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

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles;

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

non-originating good or non-originating material means a good or material that is not originating under this Chapter;

packing materials and containers for shipment means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale;

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

production means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

reasonably allocate means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

recovered goods means materials in the form of individual parts that are the result of: (a) the disassembly of used goods into individual parts; and (b) cleaning, inspecting, testing, or other processes as necessary for improvement to sound working condition;

remanufactured goods means goods classified under Harmonized System chapter 84, 85, or 87 or heading 90.26, 90.31, or 90.32, except goods classified under heading 84.18 or 85.16, that:

(a) are entirely or partially comprised of recovered goods; and

(b) have a similar life expectancy and enjoy a factory warranty similar to such a new good;

total cost means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties;

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

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

Chapter Five. Customs Administration and Trade Facilitation

Article 5.1. Publication

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.

2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

Article 5.2. Release of Goods

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

2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority shall adopt or maintain procedures that:

(a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;

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

(c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees. (1)

(1) A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the good.

Article 5.3. Automation

Each Party's customs authority shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall:

(a) use, to the extent possible, international standards;

(b) make electronic systems accessible to the trading community;

(c) provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival;

(d) employ electronic or automated systems for risk analysis and targeting;

(e) work towards developing compatible electronic systems among the Partiesâ customs authorities, to facilitate government to government exchange of international trade data; and

(f) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

Article 5.4. Risk Management

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods, while respecting the confidential nature of the information it obtains through such activities.

Article 5.5. Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide the other Parties with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims of origin and origin procedures;

(b) the implementation and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports; and (d) other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request another Party to provide specific confidential information normally collected in connection with the importation of goods.

4. For purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources, comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of another Party;

(c) historical evidence that some or all of the persons involved in the movement from the territory of the other Party to the territory of another Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

5. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

6. The Party from whom the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing such information.

7. Each Party shall endeavor to provide another Party with any other information that would assist that Party in determining whether imports from or exports to that Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of smuggling and similar infractions.

8. For purposes of facilitating regional trade, each Party shall endeavor to provide the other Parties with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with regard to laws or regulations governing importations.

9. Building on the mechanisms established in this Article, the Parties shall strive to explore additional avenues of cooperation to enhance each Partyâs ability to enforce its laws and regulations governing importations, including by concluding a mutual assistance agreement between their respective customs authorities within six months after this Agreement is signed. The Parties shall examine whether to establish other channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on importation issues.

Article 5.6. Confidentiality

1. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by another Party where that Party has failed to act in conformity with assurances provided under paragraph 1.

3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in accordance with the administration of the Party's customs laws, shall be protected from unauthorized disclosure.

Article 5.7. Express Shipments

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

(a) provide a separate, expedited customs procedure for express shipments;

(b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;

(c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;

(d) to the extent possible, provide for clearance of certain goods with a minimum of documentation; and

(e) under normal circumstances, provide for clearance of express shipments within six hours after submission of the necessary customs documents, provided the shipment has arrived.

Article 5.8. Review and Appeal

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

(a) a level of administrative review independent of the employee or office that issued the determination; and

(b) judicial review of the determination. Article 5.9: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

Article 5.10. Advance Rulings

1. Each Party, through its customs authority or other competent authority shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer (2) in the territory of another Party with regard to:

(a) tariff classification;

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

(c) the application of duty drawback, deferral, or other relief from customs duties;

(d) whether a good is originating in accordance with Chapter Four (Rules of Origin and Origin Procedures);

(e) whether a good re-entered into the territory of a Party after being exported to the territory of another Party for repair or alteration is eligible for duty free treatment in accordance with Article 3.6 (Goods Re-entered after Repair or Alteration);

(f) country of origin marking; (g) the application of quotas; and (h) such other matters as the Parties may agree.

2. Each Party shall provide that its customs authority or other competent authority shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the authority requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the authority shall take into account facts and circumstances the requester has provided.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Subject to any confidentiality requirements in its law, each Party shall make its advance rulings publicly available.

6. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions. Article 5.11: Implementation

For each Central American Party and the Dominican Republic:

(a) Articles 5.2.2(b) and (c) and 5.7 shall apply one year after the date of entry into force of this Agreement;

(b) Articles 5.1.1, 5.1.2, 5.4, and 5.10 shall apply two years after the date of entry into force of this Agreement; and

(c) Article 5.3 shall apply three years after the date of entry into force of this Agreement.

(2) For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

Article 5.12. Capacity Building

The Parties recognize the importance of trade capacity building activities in facilitating the implementation of this Chapter. Accordingly, the initial capacity building priorities of the working group on customs administration and trade facilitation under the Committee on Trade Capacity Building should be related to implementation of this Chapter and any other priorities that the Committee designates.

Chapter Six. Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

Article 6.1. Affirmation of the SPS Agreement

Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

Article 6.2. Scope and Coverage

1. This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

2. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3. Committee on Sanitary and Phytosanitary Matters

1. Not later than 30 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Sanitary and Phytosanitary Matters, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters, as set out in Annex 6.3.

2. The Parties shall establish the Committee through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

3. The objectives of the Committee shall be to help each Party implement the SPS Agreement, assist each Party to protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and facilitate trade between the Parties.

4. The Committee shall seek to promote communication and otherwise enhance present or future relationships between the Parties' agencies and ministries with responsibility for sanitary and phytosanitary matters.

5. To the extent possible, the Committee shall seek to facilitate a Party's response to a written request for information from

another Party with minimal delay. The Committee shall endeavor to ensure that at the earliest opportunity the responding Party communicates to the requesting Party the steps involved in responding to the request.

6. The Committee shall provide a forum for:

(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(c) addressing bilateral or plurilateral sanitary and phytosanitary matters with a view to facilitating trade between the Parties;

(d) consulting on issues, positions, and agendas for meetings of the WTO SPS Committee, the various Codex committees (including the Codex Alimentarius Commission), the International Plant Protection Convention, the International Office of Epizootics, and other international and regional fora on food safety and human, animal, and plant health;

(e) making recommendations on technical cooperation programs on sanitary and phytosanitary matters to the Committee on Trade Capacity Building;

(f) improving the Parties' understanding of specific issues relating to the implementation of the SPS Agreement; and

(g) reviewing progress in addressing sanitary and phytosanitary matters that may arise between the Parties' agencies and ministries with responsibility for such matters.

7. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee.

8. The Committee shall meet at least once a year unless the Parties otherwise agree.

9. The Committee shall perform its work in accordance with its terms of reference. The Committee may revise its terms of reference and may establish procedures to guide its operation.

10. The Committee may establish ad hoc working groups in accordance with its terms of reference.

11. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

Chapter Seven. Technical Barriers to Trade

Objectives

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

Article 7.1. Affirmation of the TBT Agreement

Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 7.2. Scope and Coverage

1. This Chapter applies to all standards, technical regulations, and conformity assessment procedures of central government bodies that may, directly or indirectly, affect trade in goods between the Parties. (1)

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; and

(b) sanitary and phytosanitary measures.

(1) For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

Article 7.3. International Standards

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5, and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement) issued by the WTO Committee on Technical Barriers to Trade.

Article 7.4. Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies.

2. On request of another Party, a Party shall give favorable consideration to any sector- specific proposal the Party makes for further cooperation under this Chapter.

Article 7.5. Conformity Assessment

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in another Party's territory. For example:

(a) the importing Party may rely on a supplier's declaration of conformity;

(b) conformity assessment bodies located in the territory of two or more Parties may enter into voluntary arrangements to accept the results of each other's assessment procedures;

(c) a Party may agree with another Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;

(d) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of another Party;

(e) a Party may designate conformity assessment bodies located in the territory of another Party; and

(f) a Party may recognize the results of conformity assessment procedures conducted in the territory of another Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of another Party, it shall, on request of that other Party, explain its reasons.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territories of the other Parties on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request of that other Party, explain the reasons for its decision.

4. Where a Party declines a request from another Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Partyâs territory, it shall, on request of that other Party, explain the reasons for its decision.

Article 7.6. Technical Regulations

1. Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision.

2. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it may, at the request of another Party, explain its reasons for not accepting that other Party's technical regulations as equivalent.

Article 7.7. Transparency

1. Each Party shall allow persons of the other Parties to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Parties to participate in the development of such measures on terms no less favorable than those accorded to its own persons and to persons of any other Party.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the opportunity for persons to provide meaningful comments on proposed technical regulations and conformity assessment procedures, a Party publishing a notice under Article 2.9 or 5.6 of the TBT Agreement shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and other Parties to make comments in writing on the proposal.

4. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from persons or other Parties under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification electronically to the other Parties through the inquiry points referenced in paragraph 3(b).

6. Each Party shall, on request of another Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

7. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

8. Each Party shall implement this Article as soon as is practicable and in no event later than five years from the date of entry into force of this Agreement.

Article 7.8. Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 7.8.

2. The Committee's functions shall include:

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

(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;

(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate;

(d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of two or more Parties;

(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;

(f) at a Party's request, consulting on any matter arising under this Chapter;

(g) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;

(h) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade; and

(i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where two or more Parties have had recourse to consultations under paragraph 2(f) such consultations shall, on the agreement of those Parties, constitute consultations under Article 20.4 (Consultations).

4. The Committee shall meet at least once a year unless the Parties otherwise agree.

5. All decisions of the Committee shall be taken by consensus unless, the Committee otherwise decides.

Article 7.9. Information Exchange

Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.

Article 7.10. Definitions

For purposes of this Chapter: central government body, conformity assessment procedures, standard, and technical regulation shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and TBT Agreement means the WTO Agreement on Technical Barriers to Trade.

Chapter Eight. Trade Remedies

Section A. Safeguards

Article 8.1. Imposition of a Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement, an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

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

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

(i) the most-favored-nation (MEN) applied rate of duty in effect at the time the measure is applied, and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement. (1)

3. (a) Except as provided in subparagraph (b), a Party shall apply a safeguard measure to imports of an originating good that are subject to a determination under paragraph 1 irrespective of their source.

(b) A Party may exclude imports of an originating good of another Party from application of a safeguard measure if the Party accorded duty-free treatment to imports of the good from such other Party, pursuant to an agreement between those Parties, for the three-year period preceding the date of entry into force of this Agreement.

4. No Party may apply a safeguard measure against an originating good of another Party as long as the exporting Party's

share of imports of the originating good in the importing Party does not exceed three percent, provided that Parties with less than three percent import share collectively account for not more than nine percent of total imports of such originating good.

(1) The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

Article 8.2. Standards for a Safeguard Measure

1. A Party may apply a safeguard measure, including any extension thereof, for no longer than four years. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. Subject to paragraph 1, a Party may extend the period of a safeguard measure if the competent investigating authority determines, in conformity with the procedures set out in Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting.

3. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.

4. A Party may not apply a safeguard measure more than once on the same good.

5. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 3.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

(a) apply the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) as if the safeguard measure had never been applied; or

(b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3. Administration of Safeguard Proceedings

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws, regulations, decisions, and rulings governing safeguard proceedings under this Chapter.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard proceedings under this Chapter to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures for safeguard proceedings under this Chapter, in accordance with the requirements set out in Annex 8.3.

Article 8.4. Notification and Consultation

1. A Party shall promptly notify the other Parties, in writing, on:

(a) initiating a safeguard proceeding under this Chapter;

(b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and

(c) taking a decision to apply or extend a safeguard measure.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent investigating authority required under Annex 8.3.

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

Article 8.5. Compensation

1. A Party applying a safeguard measure shall, after consultations with each Party against whose good the measure is applied, provide to such Party or Parties mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalizing compensation within 30 days, any Party against whose good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the Party applying the safeguard measure in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the later of: (a) the termination of the safeguard measure, or (b) the date on which the rate of duty returns to the rate of duty set out in the Partyâs Schedule to Annex 3.3 (Tariff Elimination).

Article 8.6. Global Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement, except that a Party taking such an action may exclude imports of an originating good of another Party if such imports are not a substantial cause of serious injury or threat thereof.

3. No Party may apply, with respect to the same good, at the same time:

(a) a safeguard measure; and

(b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 8.7. Definitions

For purposes of this Section:

competent investigating authority means the "competent investigating authority" of a Party as defined in Annex 8.7;

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;

safeguard measure means a measure described in Article 8.1.2;

serious injury means a significant overall impairment in the position of a domestic industry; substantial cause means a cause which is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

transition period means the ten-year period beginning on the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 3.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, transition period means the tariff elimination period for the good set out in that Schedule.

Section B. Antidumping and Countervailing Duties

Article 8.8. Antidumping and Countervailing Duties

1. The United States shall continue to treat each other Party as a "beneficiary country" for purposes of 19 U.S.C. §§ 1677(7)(G)Gi)(IID and 1677(7)(H) and any successor provisions. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this paragraph.

2. Except for paragraph 1, no provision of this Agreement, including the provisions of Chapter Twenty (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.

3. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.

Chapter Nine. Government Procurement

Article 9.1. Scope and Coverage

1. This Chapter applies to any measure, including any act or guideline of a Party, regarding covered procurement.

2. For purposes of this Chapter, covered procurement means a procurement of goods, services, or both:

(a) by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts;

(b) listed and subject to the conditions specified in:

(i) Annex 9.1.2(b)(i), which shall apply between the United States and each other Party;

(ii) Annex 9.1.2(b)(ii), which shall apply between the Central American Parties; and

(iii) Annex 9.1.2(b)Gii), which shall apply between each Central American Party and the Dominican Republic;

(c) that is conducted by a procuring entity; and

(d) that is not excluded from coverage.

3. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance that a Party or a state enterprise provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to state, regional, or local governments, and purchases for the direct purpose of providing foreign assistance;

(b) purchases funded by loans or grants made to a Party, including an entity of a Party by a person, international entities, associations, or another Party or a non- Party, to the extent that the conditions of such assistance are inconsistent with this Chapter;

(c) acquisition of fiscal agency or depository services, liquidation, and management services for regulated financial institutions, and sale and distribution services for government debt;

(d) hiring of government employees and related employment measures;

(e) any good or service component of any contract that is awarded by a procuring entity that is not listed in Sections A through C of Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b) (iii); and

(f) purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by companies that normally are not suppliers, or disposals of assets of businesses in liquidation or receivership.

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting any covered procurement.

5. Where a procuring entity awards a contract in a procurement that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

6. No procuring entity may prepare, design, or otherwise structure or divide any procurement in order to avoid the obligations of this Chapter.

7. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

Article 9.2. General Principles

1. With respect to any measure covered by this Chapter, each Party shall accord to the goods and services of another Party, and to the suppliers of another Party of such goods and services, treatment no less favorable than the most favorable treatment the Party or procuring entity accords to its own goods, services, and suppliers.

2. With respect to any measure covered by this Chapter, no Party may:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

3. For purposes of paragraphs 1 and 2, determination of the origin of goods shall be made in a manner consistent with Chapter Four (Rules of Origin and Origin Procedures).

4. With respect to covered procurement, a procuring entity shall not seek, take account of, or impose offsets in any stage of a procurement.

5. Paragraphs 1 and 2 do not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges, other import regulations, including restrictions and formalities, or measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

Article 9.3. Publication of Procurement Measures

Each Party shall promptly:

(a) publish any law or regulation, and any modification thereof, relating to procurement;

(b) make publicly available any procedure, judicial decision, or administrative ruling of general application, relating to procurement; and

(c) on request of a Party, provide to that Party a copy of a procedure, judicial decision, or administrative ruling of general application, relating to procurement.

Article 9.4. Publication of Notice of Intended Procurement

1. Subject to Article 9.9.2, a procuring entity shall publish in advance a notice inviting interested suppliers to submit tenders for each covered procurement.

2. The information in each such notice shall include, at a minimum, an indication that the procurement is covered by this Chapter, a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained, if applicable, any sum payable for the tender documentation, the time limits and address for submission of tenders, and the time for delivery of the goods or services being procured.

3. Each Party shall encourage its procuring entities to publish information regarding their future procurement plans as early as possible in each Partyâs fiscal year.

Article 9.5. Time Limits for the Tendering Process

1. A procuring entity shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. In no case shall a procuring entity provide less than 40 days from the date of publication of a notice of intended procurement to the final date for submission of tenders.

2. Notwithstanding paragraph 1, where there are no qualification requirements for suppliers, a procuring entity may establish a period for tendering that is less than 40 days, but in no case less than 10 days, in the following circumstances:

(a) where the procuring entity published a separate notice containing a description of the procurement, the approximate time limits for the submission of tenders or, where appropriate, conditions for participation in a procurement, and the address from which documents relating to the procurement may be obtained, at least 40 days and not more than 12 months before the final date for the submission of tenders;

(b) where an entity procures commercial goods and services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or

(c) where an unforeseen state of urgency that is duly substantiated by the procuring entity renders impracticable the time provided in paragraph 1.

Article 9.6. Tender Documentation

1. A procuring entity shall provide to interested suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the procuring entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.

2. A procuring entity may satisfy paragraph 1 by publishing the documentation by electronic means accessible to all interested suppliers. Where a procuring entity does not publish tender documentation by electronic means accessible to all interested suppliers, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

3. Where a procuring entity, in the course of a procurement, modifies the criteria referred to in paragraph 1, (1) it shall transmit all such modifications in writing:

(a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in cases where the identities of suppliers participating are not known, in the same manner as the original information was transmitted; and

(b) in adequate time to allow the suppliers to modify and re-submit their tenders, as appropriate.

(1) Each Central American Party and the Dominican Republic may make such modifications before tenders are opened. The United States may make such modifications before awarding the contract. 9-4

Article 9.7. Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. A procuring entity shall prescribe any technical specifications, where appropriate:

(a) in terms of performance requirements rather than design or descriptive characteristics; and

(b) based on international standards, where applicable, otherwise on recognized national standards.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

5. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources.

Article 9.8. Requirements and Conditions for Participating In Procurement

1. Where a procuring entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation ("conditions for participation") in order to participate in a procurement, the procuring entity shall publish a notice inviting suppliers to apply for registration or qualification, or to satisfy any other conditions for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.

2. Each procuring entity shall:

(a) limit any conditions for participation in a procurement to those that are essential to ensure that the supplier has the legal, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;

(b) recognize as qualified all suppliers of another Party that have met the requisite conditions for participation; and

(c) base qualification determinations solely on the conditions for participation that have been specified in advance in notices or tender documentation.

3. Procuring entities may establish publicly available lists of suppliers qualified to participate in procurements. Where a procuring entity requires suppliers to qualify for such a list as a condition for participation in a procurement, and a supplier that has not yet qualified applies for inclusion in the list, the procuring entity shall promptly start the qualification procedures and shall allow the supplier to submit a tender, if it is determined to be a qualifying supplier, provided there is sufficient time to fulfill the conditions for participation within the time period established for tendering.

4. No procuring entity may make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity or that the supplier has prior work experience in the territory of a Party. A procuring entity shall evaluate the financial and technical abilities of a supplier on the basis of that supplier's business activity outside the territory of the Party of the procuring entity, as well as activity, if any, in the territory of the Party of the procuring entity.

5. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide a written explanation of the reasons for its action.

6. Nothing in this Article shall preclude a procuring entity from prohibiting a supplier from participating in a procurement on grounds such as bankruptcy or false declarations.

Article 9.9. Tendering Procedures

1. Subject to paragraph 2, a procuring entity shall award contracts by means of open tendering procedures.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by means other than an open tendering procedure in the following circumstances:

(a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior notice of intended procurement or invitation to participate, including any conditions for participation, provided that the requirements of the initial notice or invitation are not substantially modified;

(b) where, for works of art, or for reasons connected with the protection of exclusive intellectual property rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;

(d) for goods purchased on a commodity market;

(e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to this Chapter;

(f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract; or

(g) in so far as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, the entity's program responsibilities, or the Party.

3. A procuring entity shall maintain records or prepare written reports providing specific justification for any contract awarded under paragraph 2, in a manner consistent with Article 9.11.3.

Article 9.10. Awarding of Contracts

1. A procuring entity shall require that, in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted, conform to the essential requirements of the tender documentation that the procuring entity provided in advance to all participating suppliers, and be from a supplier that has complied with any conditions for participation that the procuring entity has communicated in advance to all participating suppliers.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to a supplier that the procuring entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.

3. No procuring entity may cancel a procurement, or terminate or modify a contract it has awarded, in order to avoid the obligations of this Chapter.

Article 9.11. Information on Contract Awards

1. A procuring entity shall promptly inform participating suppliers of decisions on contract awards. A procuring entity shall, on request, provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender selected.

2. Promptly after awarding a contract in a covered procurement, a procuring entity shall publish a notice that includes at least the following information about the contract award:

(a) the name of the entity;

(b) a description of the goods or services included in the contract; (c) the name of the supplier awarded the contract;

(d) the value of the contract award; and

(e) where the entity did not use an open tendering procedure, an indication of the circumstances justifying the procedure used.

3. A procuring entity shall maintain records and reports relating to tendering procedures and contract awards in procurements covered by this Chapter, including the records and reports provided for in Article 9.9.3, for at least three years after the date a contract is awarded.

Article 9.12. Non-Disclosure of Information

1. A Party, its procuring entities, and its review authorities shall not disclose confidential information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. Nothing in this Chapter shall prevent a Party or its procuring entities from withholding the release of information where release might:

(a) impede law enforcement;

(b) prejudice fair competition between suppliers;

(c) prejudice the legitimate commercial interests of particular suppliers or entities, including the protection of intellectual property; or

(d) otherwise be contrary to the public interest.

Article 9.13. Ensuring Integrity In Procurement Practices

Further to Article 18.8 (Anti-Corruption Measures), each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On request of another Party, a Party shall

identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

Article 9.14. Exceptions

1. 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 a 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.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 9.15. Domestic Review of Supplier Challenges

1. Each Party shall establish or designate at least one impartial administrative or judicial authority, which shall be independent from its procuring entities, to receive and review challenges that suppliers submit relating to the obligations of the Party and its entities under this Chapter and to make appropriate findings and recommendations. In the event that a body other than such an impartial authority initially reviews a supplier's challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent from the procuring entity that is the subject of the challenge.

2. Each Party shall provide that an authority established or designated under paragraph 1 may take prompt interim measures, pending the resolution of a challenge, to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded.

3. Each Party shall ensure that its review procedures are publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.

4. Each Party shall ensure that all documents related to a challenge to a procurement are available to any impartial authority established or designated under paragraph 1.

5. A procuring entity shall respond in writing to a supplier's complaint.

6. Each Party shall ensure that an impartial authority it establishes or designates under paragraph 1 provides to suppliers the following:

(a) a sufficient period to prepare and submit written challenges, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(b) an opportunity to review relevant documents and to be heard by the authority in a timely manner;

(c) an opportunity to reply to the procuring entity's response to the supplier's complaint; and

(d) prompt delivery in writing of its findings and recommendations relating to the challenge, with an explanation of the grounds for each decision.

7. Each Party shall ensure that a supplier's submission of a challenge does not prejudice the supplier's participation in ongoing or future procurements.

Article 9.16. Modifications and Rectifications to Coverage

1. A Party may make technical rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules to Sections A through C of Annexes 9.1.2(b)(i), 9.1.2(b)Gi), and 9.1.2(b) (iii), provided that it notifies the other Parties in writing and no other Party objects in writing within 30 days after the notification. A Party that makes such a rectification or minor amendment shall not be required to provide compensatory adjustments to the other Parties.

2. A Party may modify its coverage under this Chapter provided that it:

(a) notifies the other Parties in writing and no other Party objects in writing within 30 days after the notification; and

(b) except as provided in paragraph 3, offers within 30 days after notifying the other Parties acceptable compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing before the modification.

3. A Party need not provide compensatory adjustments in those circumstances where the proposed modification covers one or more procuring entities on which the Parties agree that government control or influence has been effectively eliminated. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party or Parties may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entityâs continued coverage under this Chapter.

4, The Commission shall modify the relevant section of Annexes 9.1.2(b)(i), 9.1.2(b)(i), and 9.1.2(b)(ii) to reflect any agreed modification, technical rectification, or minor amendment.

Article 9.17. Definitions

For purposes of this Chapter:

build-operate-transfer contract and public works concession contract mean any contractual arrangements, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contract, a procuring entity grants to the supplier, for a specified period, temporary ownership, if the Party permits such ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

in writing or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information;

offsets means conditions or undertakings imposed or considered by a procuring entity that encourage local development or improve a Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade, or similar requirements;

open tendering procedure means any type of procurement method of a Party, except direct purchasing methods as specified in Article 9.9.2, provided these methods are consistent with this Chapter;

procuring entity means an entity listed in Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b)(iii);

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

services includes construction services, unless otherwise specified;

supplier means a person that has provided, provides, or could provide goods or services to a procuring entity; and

technical specification means a specification that sets out the characteristics of goods to be procured or their related processes and production methods, or the characteristics of services to be procured or their related operating methods, including the applicable administrative provisions, and requirements relating to conformity assessment procedures that an entity prescribes. A technical specification may also include or deal exclusively with terminology, symbols, packaging, or marking or labeling requirements, as they apply to a good, process, service, or production or operating method.

Chapter Ten. Investment

Section A. Investment

Article 10.1. Scope and Coverage

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

(a) Investors of another Party;

(b) Covered investments; and

(c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.

2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party.

3. For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.2. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service supplier of another Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

Article 10.3. National Treatment

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

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

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.4. Most-Favored-Nation Treatment

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

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

Article 10.5. Minimum Standard of Treatment (1)

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

(1) Article 10.5 shall be interpreted in accordance with Annex 10-B.

Article 10.6. Treatment In Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of another Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution or compensation, which in either case shall be in accordance with customary international law and, with respect to compensation, shall be in accordance with Article 10.7.2 through 10.7.4 (2)

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

(2) The limitations set out in Annex 10-D apply to the submission to arbitration under Section B of a claim alleging a breach of this paragraph.

Article 10.7. Expropriation and Compensation (3)

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

(d) in accordance with due process of law and Article 10.5.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid - converted into the currency of payment at the market rate of exchange prevailing on the date of payment - shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Fifteen (Intellectual Property Rights). (4)

(3) Article 10.7 shall be interpreted in accordance with Annexes 10-B and 10-C.

(4) For greater certainty, the reference to "the TRIPS Agreement" in paragraph 5 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

Article 10.8. Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and

(f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, nondiscriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.9. Performance Requirements

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any of the following requirements, or enforce any commitment or undertaking:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign

exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; (5) or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws. (6)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(5) For greater certainty, the references to "the TRIPS Agreement" in paragraph 3(b)(i) include any waiver in force between the Parties of any

provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

(6) The Parties recognize that a patent does not necessarily confer market power.

Article 10.10. Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.11. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.12. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non- Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.13. Non-Conforming Measures

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:

(a) Any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10.10.

2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under

Article 15.1.8 (General Provisions) as specifically provided in that Article.

5. Articles 10.3, 10.4, and 10.10 do not apply to:

(a) procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 10.14. Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Section B. Investor-State Dispute Settlement

Article 10.15. Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation.

Article 10.16. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address,

and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention; or

(c) under the UNCITRAL Arbitration Rules.

4, Acclaim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent.

A claim asserted for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral tules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint such arbitrator.

Article 10.17. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter ll of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article ll of the New York Convention for an "agreement in writing"; and

(c) Article I of the Inter-American Convention for an "agreement".

Article 10.18. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimantâs written waiver, and

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimantâs and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

4. No claim may be submitted to arbitration:

(a) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)G)(B), or

(b) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)G)(C),

if the claimant (for claims brought under Article 10.16.1(a)) or the claimant or the enterprise (for claims brought under Article 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, for adjudication or resolution.

Article 10.19. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral tules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneyâs fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-F.

10. If a separate multilateral agreement enters into force as between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force as between the Parties.

Article 10.21. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.5 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.22. Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)()(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws; (7) and

(ii) such rules of international law as may be applicable.

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 19.1.3(c) (The Free Trade Commission) shall be binding on a tribunal established under this Section, and any decision or award issued by the tribunal must be consistent with that decision. Article 10.23: Interpretation of Annexes 1. Where a respondent asserts as a

defense that the measure alleged to be a breach is within the scope of Annex I or Annex I, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 19.1.3(c) (The Free Trade Commission) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

(7) The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Article 10.24. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.25. Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of any Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes

would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26. Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal is not authorized to award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until: (a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 20.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 20.13 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8.

10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 10.27. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-G.

Section C. Definitions

Article 10.28. Definitions

For Purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with another Party; disputing parties means the claimant and the respondent; disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

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

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceeding by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans; (8) (9)

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (10) (11) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

investment agreement means a written agreement (12) that takes effect on or after the date of entry into force of this Agreement between a national authority (13) of a Party and a covered investment or an investor of another Party that grants the covered investment or investor rights:

(a) with respect to natural resources or other assets that a national authority controls; and

(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself;

investment authorization (14) means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party;

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

national means a natural person who has the nationality of a Party according to Annex 2.1 (Country-Specific Definitions);

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

non-disputing Party means a Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute; Secretary-General means the Secretary-General of ICSID; tribunal means an arbitration tribunal established under Article 10.19 or 10.25; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

(8) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

(9) For purposes of this Agreement, claims to payment that are immediately due and result from the sale of goods or services are not investments.

(10) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(11) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(12) "Written agreement" refers to an agreement in writing, executed by both parties, that creates an exchange of tights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(13) For purposes of this definition, "national authority" means an authority at the central level of government.

(14) For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

Annex 10-A. Public Debt

The rescheduling of the debts of a Central American Party or the Dominican Republic, or of such Party's institutions owned or controlled through ownership interests by such Party, owed to the United States and the rescheduling of any of such Partyâs debts owed to creditors in general are not subject to any provision of Section A other than Articles 10.3 and 10.4.

Annex 10-B. Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-C results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-C. Expropriation

The Parties confirm their shared understanding that:

1. Article 10.7.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

3. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by- case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action. (b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Annex 10-D. Treatment in Case of Strife

1. No investor may submit to arbitration under Section B a claim alleging that Guatemala has breached Article 10.6.2 as a

result of an armed movement or civil disturbance and that the investor or the investor's enterprise has incurred loss or damage by reason of or arising out of such movement or disturbance.

2. No investor of Guatemala may submit to arbitration under Section B a claim alleging that any other Party has breached Article 10.6.2(b).

3. The limitation set out in paragraph 1 is without prejudice to other limitations existing in Guatemala's law with respect to an investor's claim that Guatemala has breached Article 10.6.2.

Annex 10-E. Submission of a Claim to Arbitration

1. An investor of the United States may not submit to arbitration under Section B a claim that a Central American Party or the Dominican Republic has breached an obligation under Section A either:

(a) on its own behalf under Article 10.16.1(a), or

(b) on behalf of an enterprise of a Central American Party or the Dominican Republic that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of a Central American Party or the Dominican Republic.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of a Central American Party or the Dominican Republic, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

3. Notwithstanding Article 10.18, an investor of the United States may not submit to arbitration under Section B a claim relating to an investment in sovereign debt instruments with a maturity of less than one year unless one year has elapsed from the date of the events giving rise to the claim.

Annex 10-F. Appellate Body or Similar Mechanism

1. Within three months of the date of entry into force of this Agreement, the Commission shall establish a Negotiating Group to develop an appellate body or similar mechanism to review awards rendered by tribunals under this Chapter. Such appellate body or similar mechanism shall be designed to provide coherence to the interpretation of investment provisions in the Agreement. The Commission shall direct the Negotiating Group to take into account the following issues, among others:

(a) the nature and composition of an appellate body or similar mechanism;

(b) the applicable scope and standard of review;

(c) transparency of proceedings of an appellate body or similar mechanism;

(d) the effect of decisions by an appellate body or similar mechanism;

(e) the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under Articles 10.16 and 10.25; and

(f) the relationship of review by an appellate body or similar mechanism to existing domestic laws and international law on the enforcement of arbitral awards.

2. The Commission shall direct the Negotiating Group to provide to the Commission, within one year of establishment of the Negotiating Group, a draft amendment to the Agreement that establishes an appellate body or similar mechanism. On approval of the draft amendment by the Parties, in accordance with Article 22.2 (Amendments), the Agreement shall be so amended.

Annex 10-G. Service of Documents on a Party Under Section B

Costa Rica

Notices and other documents in disputes under Section B shall be served on Costa Rica by delivery to:

Dirección de Aplicación de Acuerdos Comerciales Internacionales Ministerio de Comercio Exterior San José, Costa Rica

The Dominican Republic

Notices and other documents in disputes under Section B shall be served on the Dominican Republic by delivery to:

Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales Secretaría de Estado de Industria y Comercio Santo Domingo, República Dominicana

El Salvador

Notices and other documents in disputes under Section B shall be served on El Salvador by delivery to:

Dirección de Administración de Tratados Comerciales Ministerio de Economía Alameda Juan Pablo I y Calle Guadalupe Edificio C1-C2, Plan Maestro Centro de Gobierno San Salvador, El Salvador

Guatemala

Notices and other documents in disputes under Section B shall be served on Guatemala by delivery to:

Ministerio de Economía Ciudad de Guatemala, Guatemala

Honduras

Notices and other documents in disputes under Section B shall be served on Honduras by delivery to:

Dirección General de Integración Económica y Política Comercial Secretaría de Estado en los Despachos de Industria y Comercio Boulevard José Cecilio del Valle Edificio San José, antiguo edificio de Fenaduanah Tegucigalpa, Honduras

Nicaragua

Notices and other documents in disputes under Section B shall be served on Nicaragua by delivery to:

Dirección de Integración y Administración de Tratados, or its successor Ministerio de Fomento, Industria y Comercio Managua, Nicaragua

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX) Office of the Legal Adviser Department of State Washington, D.C. 20520 United States of America

Chapter Eleven. Cross-Border Trade In Services

Article 11.1. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:

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

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

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:

(a) central, regional, or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by an investor of another Party as defined in Article 10.28 (Definitions) or a covered investment. (1)

4. This Chapter does not apply to:

(a) financial services, as defined in Article 12.20 (Definitions), except as provided in paragraph 3;

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

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

(ii) specialty air services;

(c) procurement; or

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

5. This Chapter does not impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority. A "service supplied in the exercise of governmental authority" means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

(1) The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

Article 11.2. National Treatment

1. Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 11.3. Most-Favored-Nation Treatment

Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of any other Party or a non-Party.

Article 11.4. Market Access

No Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, (2) or

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

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(2) This clause does not cover measures of a Party that limit inputs for the supply of services.

Article 11.5. Local Presence

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

Article 11.6. Non-conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii(a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, and 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out in its Schedule to Annex IL.

Article 11.7. Transparency In Developing and Applying Regulations (3)

Further to Chapter Eighteen (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter;

(b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including on request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(c) to the extent possible, each Party shall allow a reasonable time between publication of final regulations and their effective date.

(3) For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria,

Article 11.8. Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in

other multilateral fora in which the Parties participate) enter into effect for each Party, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties will coordinate on such negotiations as appropriate.

Article 11.9. Mutual Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, including another Party and a non-Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of another Party or a non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for another Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. No Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.9 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

Article 11.10. Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors; (b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 11.11. Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other issues of mutual interest.

Article 11.12. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service is being supplied by an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party that is an enterprise of such other Party if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or the denying Party, own or control the enterprise.

Article 11.13. Specific Commitments

1. Express Delivery Services:

(a) The Parties affirm that measures affecting express delivery services are subject to this Agreement.

(b) For purposes of this Agreement, express delivery services means the collection, transport, and delivery, of documents, printed matter, parcels, goods, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.(4)

(c) The Parties express their desire to maintain at least the level of market openness they provided for express delivery services existing on the date this Agreement is signed.

(d) Neither a Central American Party nor the Dominican Republic may adopt or maintain any restriction on express delivery services that is not in existence on the date this Agreement is signed. Each such Party confirms that it does not intend to direct revenues from its postal monopoly to benefit express delivery services as defined in subparagraph (b). Under title 39 of the United States Code, an independent government agency determines whether postal rates meet the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the U.S. Postal Service reasonably assignable to such class or type.

(e) Each Party shall ensure that, where its monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Partyâs obligations under Articles 11.2, 11.3, 11.4, 10.3 (National Treatment), or 10.4 (Most-Favored-Nation Treatment). The Parties also reaffirm their obligations under Article VIII of the GATS. (5)

2. A Party's Section of Annex 11.13 sets out specific commitments by that Party.

(4) For greater certainty, for the United States, express delivery services do not include delivery of letters subject to the Private Express Statutes (18 U.S.C. § 1693 et seg., 39 U.S.C. § 601 et seg.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

(5) For greater certainty, the Parties reaffirm that nothing in this Article is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

Article 11.14. Definitions

For purposes of this Chapter:

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

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

(b) in the territory of one Party by a person of that Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party;

but does not include the supply of a service in the territory of a Party by an investor of another Party as defined in Article 10.28 (Definitions) or a covered investment;

enterprise means an "enterprise" as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

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

professional services means services, the provision of which requires specialized post- secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service;(6) and

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(6) The Parties understand that for purposes of Articles 11.2 and 11.3, "service suppliers" has the same meaning as "services and service suppliers" in the GATS.

Chapter Twelve. Financial Services

Article 12.1. Scope and Coverage

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

(a) financial institutions of another Party;

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

(c) cross-border trade in financial services.

2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.12 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B of Chapter Ten (Investor-State Dispute Settlement) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.7, 10.8, 10.12, or 10.14, as incorporated into this Chapter.

(c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

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

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. Subject to subparagraph (c), for two years beginning on the date of entry into force of this Agreement, this Chapter shall not apply to:

(i) measures adopted or maintained by the Dominican Republic relating to financial institutions of Costa Rica, El Salvador, Honduras, or Nicaragua to the extent they supply banking services; investors of Costa Rica, El Salvador, Honduras, or Nicaragua, and investments of such investors, in such financial institutions in the territory of the Dominican Republic; or cross-border trade in banking services between the Dominican Republic and Costa Rica, El Salvador, Honduras, or Nicaragua; or

(ii) measures adopted or maintained by Costa Rica, El Salvador, Honduras, or Nicaragua relating to financial institutions of the Dominican Republic to the extent they supply banking services; investors of the Dominican Republic, and investments of such investors, in such financial institutions in the territory of Costa Rica, El Salvador, Honduras, or Nicaragua; or cross-

border trade in banking services between Costa Rica, El Salvador, Honduras, or Nicaragua and the Dominican Republic;

(iii) measures adopted or maintained by the Dominican Republic relating to financial institutions of Guatemala; investors of Guatemala, and investments of such investors, in such financial institutions in the territory of the Dominican Republic; or cross-border trade in financial services between the Dominican Republic and Guatemala; or

(iv) measures adopted or maintained by Guatemala relating to financial institutions of the Dominican Republic; investors of the Dominican Republic, and investments of such investors, in such financial institutions in the territory of Guatemala; or cross-border trade in financial services between Guatemala and the Dominican Republic.

(b) During the two-year period referred to in subparagraph (a), the Dominican Republic and each Central American Party shall seek to agree on those measures described in subparagraph (a) that shall be considered non-conforming measures pursuant to Article 12.9 and that shall be reflected in their respective Schedules to Annex III for purposes of modifying their rights and obligations with respect to each other under this Chapter.

(c) If the Commission approves any such agreement during this period, each relevant Party's schedule shall be modified accordingly. Subparagraph (a) shall cease to apply as between the Dominican Republic and the relevant Central American Party on the date the modification takes effect.

Article 12.2. National Treatment

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

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

3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3. Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions, and cross-border financial service suppliers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with another Party or a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4. Market Access for Financial Institutions

No Party may adopt or maintain, with respect to financial institutions of another Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

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

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

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

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

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

For purposes of this Article, "financial institutions of another Party" includes financial institutions that investors of another Party seek to establish in the territory of the Party.

Article 12.5. Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross- border financial service suppliers of another Party to supply the services specified in Annex 12.5.1.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of that other Party or of any other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

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

Article 12.6. New Financial Services (3)

Each Party shall permit a financial institution of another Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

(1) The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another Party to request it to consider authorizing the supply of a financial service that is not supplied in the territory of any Party. The application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

Article 12.7. Treatment of Certain Information

Nothing In this Chapter requires a Party to furnish or allow access to:

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

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

Article 12.8. Senior Management and Boards of Directors

1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

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

Article 12.9. Non-Conforming Measures

1. Articles 12.2 through 12.5 and 12.8 do not apply to:

(a) Any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in its Schedule to Annex II,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.8.(2)

2. Annex 12.9.2 sets out certain specific commitments by each Party.

3. Annex 12.9.3 sets out, solely for purposes of transparency, supplementary information regarding certain aspects of financial services measures of a Party that the Party considers are not inconsistent with its obligations under this Chapter.

4. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex III.

5. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.4 (Market Access) does not apply shall be treated as a non-conforming measure to which Article 12.2, 12.3, or 12.4, as the case may be, does not apply, to the extent that the measure, sector, subsector, or activity set out in the Schedule is covered by this Chapter.

(2) For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of this Agreement, with Article 12.5.

Article 12.10. Exceptions

1. Notwithstanding any other provision of this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of another Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (3) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of another Party or a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Partyâs obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial

institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

(3) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

Article 12.11. Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 18.2.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.

3. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of another Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

Article 12.12. Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

Article 12.13. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14. Domestic Regulation

Except with respect to non-conforming measures listed in its Schedule to Annex II, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

Article 12.15. Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Article 12.16. Financial Services Committee

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

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

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

(c) participate in the dispute settlement procedures in accordance with Article 12.19.

All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

3, The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17. Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of two or more Parties.

Article 12.18. Dispute Settlement

1. Section A of Chapter Twenty (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as financial services panelists. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to seven individuals who are not nationals of any Party. The roster members shall be appointed by consensus and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

3, Financial services roster members, as well as financial services panelists, shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct to be established by the Commission.

4. When a Party claims that a dispute arises under this Chapter, Article 20.9 (Panel Selection) shall apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 20.8 (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

5. Notwithstanding Article 20.16 (Non-Implementation - Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.19. Investment Disputes In Financial Services

1. Where an investor of a Party submits a claim under Section B of Chapter Ten (Investment) against another Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 20.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. The Financial Services Committee may decide that, for purposes of a referral pursuant to paragraph 1, the financial services authorities of the relevant Parties shall make the decision described in paragraph 2 and transmit that decision to the tribunal and the Commission. In that case, a request may be made under paragraph 3 if the relevant Parties have not made the decision described in paragraph 2 within 60 days of their receipt of the referral under paragraph 1.

5. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within ten days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

6. For purposes of this Article, tribunal means a tribunal established under Article 10.19 (Selection of Arbitrators).

Article 12.20. Definitions

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

(a) from the territory of one Party into the territory of another Party,

(b) in the territory of one Party by a person of that Party to a person of another Party, or

(c) by a national of one Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

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

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency; and

(d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;

(f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge, and debit cards, travelers checks, and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i) money market instruments (including checks, bills, and certificates of deposits);

(ii) foreign exchange;

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

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

(v) transferable securities,

(vi) other negotiable instruments and financial assets, including bullion;

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

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 10.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.28;

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 2.1 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

Chapter Thirteen. Telecommunications (1)

(1) In place of the obligations established in this Chapter, Costa Rica shall undertake the specific commitments set out in Annex 13.

Article 13.1. Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;

(b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications services;

(c) other measures relating to public telecommunications networks or services; and

(d) measures adopted or maintained by a Party relating to the supply of information services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally;

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

Article 13.2. Access to and Use of Public Telecommunications Services

1. Each Party shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of another Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and

(b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

Article 13.3. Obligations Relating to Suppliers of Public Telecommunications Services (2)

(2) This Article is subject to Annex 13.3. Paragraphs 2 through 4 of this Article do not apply with respect to suppliers of commercial mobile

services. Nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of another Party.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

(c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications suppliers to file their interconnection contracts.

Resale

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions. (3)

Dialing Parity

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of another Party, and afford suppliers of public telecommunications services of another Party non- discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

(3) In complying with this paragraph, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua may take into account the economic feasibility of providing number portability.

Article 13.4. Additional Obligations Relating to Major Suppliers of Public Telecommunications Services (4)

(4) This Article is subject to Annex 13.3. This Article does not apply with respect to suppliers of commercial mobile services. This Article is without prejudice to any rights or obligations that a Party may have under the GATS, and nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

Treatment by Major Suppliers

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of another Party treatment no less favorable than such major suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection. Competitive Safeguards

2. (a) Each Party shall maintain (5) appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

3. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates, (6) to suppliers of public telecommunications services of another Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services. (7)

Unbundling of Network Elements

4. (a) Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

(b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law and regulations.

Interconnection

5. (a) General Terms and Conditions

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

(i) at any technically feasible point in the major supplier's network;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and, subject to Annex 13.4.5, cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of another Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an interconnection agreement in force or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Negotiations

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body or other relevant body.

(ii) Each Party shall make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory.

Provisioning and Pricing of Leased Circuits Services

6. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of another Party leased circuits services that are public telecommunications services on terms, conditions, and at rates that are reasonable and non- discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of another Party at flat-rate, cost-oriented prices.

Co-location

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of another Party physical co-location of equipment necessary for interconnection on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory:

(i) provide an alternative solution, or

(ii) facilitate virtual co-location in its territory,

on terms, conditions, and at cost-oriented rates that are reasonable, non- discriminatory, and transparent.

(c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

Access to Rights-of-Way

8. Subject to Annex 13.4.8, each Party shall ensure that major suppliers in its territory afford access to their poles, ducts, conduits, and rights-of-way to suppliers of public telecommunications services of another Party on terms, conditions, and at rates that are reasonable and non-discriminatory.

(5) For purposes of paragraph 2, "maintain" a measure includes the actual implementation of such measure, as appropriate.

(6) For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations satisfy the standard of reasonableness.

(7) Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

Article 13.5. Submarine Cable Systems

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate a submarine cable system as a public telecommunications service.

Article 13.6. Conditions for the Supply of Information Services

1. No Party may require an enterprise in its territory that it classifies (8) as a supplier of information services and that supplies such services over facilities that it does not own to:

(a) supply such services to the public generally;

(b) cost-justify its rates for such services;

(c) file a tariff for such services;

(d) interconnect its networks with any particular customer for the supply of such services; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

(8) For purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

Article 13.7. Independent Regulatory Bodies and Government-Owned Telecommunications Suppliers (9)

(9) Each Party shall endeavor to ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. No Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of another Party on the ground that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

Article 13.8. Universal Service

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.9. Licenses and other Authorizations

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures it applies;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

Article 13.10. Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. For greater certainty, a Party's measures regarding the allocation and assignment of spectrum and regarding frequency

management are not measures that are per se inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1.3 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

Article 13.11. Enforcement

Each Party shall provide its competent authority with the authority to establish and enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

Article 13.12. Resolution of Domestic Telecommunications Disputes

Further to Articles 18.4 (Administrative Proceedings) and 18.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

(a) (i) Each Party shall ensure that enterprises of another Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 13.2 through 13.5.

(ii) Each Party shall ensure that suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body (10) to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

(b) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Judicial Review

(c) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Partyâs telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority.

(10) In the United States, this body may be a state regulatory authority.

Article 13.13. Transparency

Further to Articles 18.2 (Publication) and 18.3 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

(c) its measures relating to public telecommunications services are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service;

(ii) procedures relating to judicial and other adjudicatory proceedings;

(iii) specifications of technical interfaces;

(iv) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;

(v) conditions for attaching terminal or other equipment to the public telecommunications network; and

(vi) notification, permit, registration, or licensing requirements, if any.

Article 13.14. Flexibility In the Choice of Technologies

No Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

Article 13.15. Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 13.16. Relationship to other Chapters

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

Article 13.17. Definitions

For purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an "enterprise" as defined in Article 2.1 (Definitions of General Application), and includes a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly supplied by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of

participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market; network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to supply public telecommunications services;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications; and

user means an end-user or a supplier of public telecommunications services.

Chapter Fourteen. Electronic Commerce

Article 14.1. General

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

Article 14.2. Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

Article 14.3. Digital Products

1. No Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. No Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:

(a) on the basis that

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of another Party or non-Party,

or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory. (1)

4. No Party may accord less favorable treatment to digital products transmitted electronically:

(a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of another Party than it accords to like digital products transmitted electronically that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, or distributor is a person of another Party than it accords to like digital products transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non-Party.
5. Paragraphs 3 and 4 do not apply to any non-conforming measure described in Articles 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), or 12.9 (Non- Conforming Measures).

(1) For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

Article 14.4. Transparency

Each Party shall publish or otherwise make available to the public its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 14.5. Cooperation

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

(a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;

(b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;

(c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

(d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and

(e) actively participating in hemispheric and multilateral fora to promote the development of electronic commerce.

Article 14.6. Definitions

For purposes of this Chapter:

carrier medium means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, and a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded; (2)

electronic means means employing computer processing; and

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.

(2) For greater certainty, digital products do not include digitized representations of financial instruments. 14-3

Chapter Fifteen. Intellectual Property Rights

Article 15.1. General Provisions

1. Each Party shall, at a minimum, give effect to this Chapter. A Party may, but shall not be obliged to, implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement does not contravene this Chapter.

2. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:

(a) the WIPO Copyright Treaty (1996); and

(b) the WIPO Performances and Phonograms Treaty (1996).

3. Each Party shall ratify or accede to the following agreements by January 1, 2006:

(a) the Patent Cooperation Treaty, as revised and amended (1970); and

(b) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980).

4. Each Party shall ratify or accede to the following agreements by January 1, 2008:

(a) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974); and

(b) the Trademark Law Treaty (1994).

5. (a) Each Party shall ratify or accede to the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention 1991) (1). Nicaragua shall do so by January 1, 2010. Costa Rica shall do so by June 1, 2007. All other Parties shall do so by January 1, 2006.

(b) Subparagraph (a) shall not apply to any Party that provides effective patent protection for plants by the date of entry into force of this Agreement. Such Parties shall make all reasonable efforts to ratify or accede to the UPOV Convention 1991.

6. Each Party shall make all reasonable efforts to ratify or accede to the following agreements:

(a) the Patent Law Treaty (2000);

(b) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and

(c) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

7. Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the TRIPS Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) and to which they are party.

8. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (2) of the other Parties treatment no less favorable than it accords to its own nationals with regard to the protection (3) and enjoyment of such intellectual property rights and any benefits derived from such rights.

9. A Party may derogate from paragraph 8 in relation to its judicial and administrative procedures, including any procedure requiring a national of another Party to designate for service of process an address in its territory or to appoint an agent in its territory, provided that such derogation:

(a) is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

10. Paragraph 8 does not apply to procedures provided in multilateral agreements to which the Parties are party concluded under the auspices of WIPO in relation to the acquisition or maintenance of intellectual property rights.

11. Except as it provides otherwise, this Chapter gives rise to obligations in respect of all subject matter existing on the date of entry into force of this Agreement that is protected on that date in the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

12. Except as otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.

13. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

14. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights shall be in writing and shall be published, (4) or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent.

15. Nothing in this Chapter shall be construed to prevent a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set out in this Chapter, provided that such measures are consistent with this Chapter.

16. Recognizing the Parties' commitment to trade capacity building as reflected in the establishment of the Committee on Trade Capacity Building under Article 19.4 (Committee on Trade Capacity Building) and the importance of trade capacity building activities, the Parties shall cooperate through that Committee in the following initial capacity-building priority activities, on mutually agreed terms and conditions, and subject to the availability of appropriated funds:

(a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property rights;

(b) appropriate coordination, training, specialization courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and

(c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.

(1) The Parties recognize that the UPOV Convention 1991 contains exceptions to the breeder's right, including for acts done privately and for non-commercial purposes, such as private and non-commercial acts of farmers. Further, the Parties recognize that the UPOV Convention 1991 provides for restrictions to the exercise of a breeder's right for reasons of public interest, provided that the Parties take all measures necessary to ensure that the breeder receives equitable remuneration. The Parties also understand that each Party may avail itself of these exceptions and restrictions. Finally, the Parties understand that there is no conflict between the UPOV Convention 1991 and a Party's ability to protect and conserve its genetic resources.

(2) For purposes of Articles 15.1.8, 15.1.9, 15.4.2, and 15.7.1, a national of a Party shall also mean, in respect of the relevant right, an entity located in that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.1.2 through 15.1.6 and the TRIPS Agreement.

(3) For purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of this paragraph, "protection" shall also include the prohibition on circumvention of effective technological measures set out in Article 15.5.7 and the rights and obligations concerning rights management information set out in Article 15.5.8.

(4) A Party may satisfy the requirement for publication by making the measure available to the public on the Internet.

Article 15.2. Trademarks

1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications and scent marks. A geographical indication is capable of constituting a mark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as

originating (5) in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good or service is essentially attributable to its geographical origin.

2. In view of the obligations of Article 20 of the TRIPS Agreement, each Party shall ensure that measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, inter alia, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such goods.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the ownerâs trademark is registered, where such use would result in a likelihood of confusion. In case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

4. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

5. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) (Paris Convention) shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (6) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

6. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

7. Each Party shall provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks, and work to provide, to the maximum degree practical, a publicly available electronic database - including an on-line database - of trademark applications and registrations.

8. (a) Each Party shall provide that each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their common names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979), as revised and amended (Nice Classification).

(b) Each Party shall provide that goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

9. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

10. No Party may require recordal of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes. (7)

(5) For purposes of this Chapter, "originating" does not have the meaning ascribed to that term in Article 2.1 (Definitions of General Application).

(6) In determining whether a trademark is well known, the reputation of the trademark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

(7) A Party may establish a means to allow licensees to record licenses for the purpose of providing notice to the public as to the existence of the license. However, no Party may make notice to the public a requirement for asserting any rights under the license.

Article 15.3. Geographical Indications Definition

1. For purposes of this Article, geographical indications are indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication.

Procedures with Respect to Geographical Indications

2. Each Party shall provide the legal means to identify (8) and protect geographical indications of the other Parties that meet the criteria of paragraph 1. Each Party shall provide the means for persons of another Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications and petitions from persons of another Party without the requirement for intercession by that Party on behalf of its persons.

3. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

4. Each Party shall make its regulations governing filing of such applications or petitions, as the case may be, readily available to the public.

5. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.

6. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. Each Party shall make available contact information sufficient to allow (a) the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and (b) applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions.

Relationship between Trademarks and Geographical Indications

7. Each Party shall ensure that grounds for refusing protection or recognition of a geographical indication include the following:

(a) the geographical indication is likely to be confusingly similar to a trademark that is the subject of a good-faith pending application or registration; and

(b) the geographical indication is likely to be confusingly similar to a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law. (9)

(8) For purposes of this paragraph, legal means to identify means a system that permits applicants to provide information on the quality, reputation, or other characteristics of the asserted geographical indication.

(9) For purposes of this paragraph, the Parties understand that each Party has already established grounds for refusing protection of a trademark under its law, including that (a) the trademark is likely to be confusingly similar to a geographical indication that is the subject of a registration; and (b) the trademark is likely to be confusingly similar to a pre-existing geographical indication, the rights to which have been acquired in accordance with the Party's law.

Article 15.4. Domain Names on the Internet

1. In order to address trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provides an appropriate procedure for the settlement of disputes based on the principles established in the Uniform Domain-Name Dispute- Resolution Policy.

2. Each Party shall require that the management of its ccTLD provides on-line public access to a reliable and accurate

database of contact information for domain-name registrants. In determining the appropriate contact information, the management of a Party's ccTLD may give due regard to the Party's laws protecting the privacy of its nationals.

Article 15.5. Obligations Pertaining to Copyright and Related Rights

1. Each Party shall provide that authors, performers, and producers of phonograms (10) have the right (11) to authorize or prohibit all reproductions of their works, performances, or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form). (12)

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize the making available to the public of the original and copies of their works, performances, and phonograms (13) through sale or other transfer of ownership.

3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and of a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the authorâs death; and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or

(ii) failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply the provisions of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to the subject matter, rights, and obligations provided for in this Article and Articles 15.6 and 15.7.

6. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding any economic right in a work, performance, or phonogram may freely and separately transfer such right by contract; and

(b) any person acquiring or holding any such economic right by virtue of a contract, including contracts of employment underlying the creation of works and performances, and production of phonograms, shall be able to exercise such right in that person's own name and enjoy fully the benefits derived from such right.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or

(ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:

(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure; or

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any

effective technological measure,

shall be liable and subject to the remedies provided for in Article 15.11.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).

(c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil cause of action or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights.

(d) Each Party shall confine exceptions to any measures implementing the prohibition in subparagraph (a)(ii) on technology, products, services, or devices that circumvent effective technological measures that control access to, and, in the case of clause (i), that protect any of the exclusive rights of copyright or related rights in, a protected work, performance, or phonogram referred to in subparagraph (a)(ii), to the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance or display of a work, performance, or phonogram, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate on-line content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii); and

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network.

(c) Each Party shall confine exceptions to any measures implementing the prohibition referred to in subparagraph (a)(i) to the activities listed in subparagraph (d) and the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram, not otherwise available to it, for the sole purpose of making acquisition decisions;

(ii) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the on-line activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; and

(iii) noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that in order for any such exception to remain in effect for more than four years, a Party must conduct a review before the expiration of the four-year period and at intervals of at least every four years thereafter, pursuant to which it is demonstrated in such a proceeding by substantial evidence that there is a continuing actual or likely adverse impact on the particular noninfringing use.

(f) Each Party may provide exceptions to any measures implementing the prohibitions referred to in subparagraph (a) for lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, essential security, or similar governmental purposes.

(g) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

8. In order to provide adequate legal protection and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who, without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies provided for in Article 15.11.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) Each Party shall confine exceptions to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, national defense, essential security, or similar governmental purposes.

(c) Rights management information means:

(i) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram, or the owner of any right in the work, performance, or phonogram; or

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public. Nothing in this paragraph shall obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. In order to confirm that all agencies at the central level of government use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or decrees to actively regulate the acquisition and management of software for such use. These measures may take the form of procedures such as preparing and maintaining inventories of software on agency computers and inventories of software licenses.

10. (a) With respect to Articles 15.5, 15.6, and 15.7, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

(b) Notwithstanding subparagraph (a) and Article 15.7.3(b), no Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

(10) References in this Chapter to “authors, performers, and producers of phonograms” include any successors in interest.

(11) With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize means an exclusive right.

(12) The Parties understand that the reproduction right as set out in this paragraph and in Article 9 of the Berne Convention for the Protection of Literary and Artistic Works (1971) (Berne Convention) and the exceptions permitted under the Berne Convention and Article 15.5.10(a) fully apply in the digital environment, in particular to the use of works in digital form.

(13) With respect to copyright and related rights in this Chapter, a "performance" refers to a performance fixed in a phonogram, unless otherwise specified.

Article 15.6. Obligations Pertaining Specifically to Copyright

Without prejudice to Articles 11(1)(ii), 11bis(1)G) and Gi), 11ter(1)Gi), 14(1) (ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, directly or indirectly, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Article 15.7. Obligations Pertaining Specifically to Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of another Party and to performances or phonograms first published or fixed in the territory of a Party. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication. (14)

2. Each Party shall provide to performers the right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 15.5.10, the application of this right to traditional free over-the-air noninteractive broadcasting, and exceptions or limitations to this right for such broadcasting, shall be a matter of domestic law.

(c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 15.5.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

4. No Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

5. For purposes of this Article and Article 15.5, the following definitions apply with respect to performers and producers of phonograms:

(a) performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(c) fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) producer of a phonogram means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(e) publication of a performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(f) broadcasting means the transmission by wireless means or satellite to the public of sounds or sounds and images, or of the representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; and

(g) communication to the public of a performance or a phonogram means the transmission to the public by any medium,

otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

(14) For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

Article 15.8. Protection of Encrypted Program-Carrying Satellite Signals

1. Each Party shall make it a criminal offense:

(a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive and further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

Article 15.9. Patents

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively.

2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, any Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make such patent protection available. Any Party that provides patent protection for plants or animals on or after the date of entry into force of this Agreement shall maintain such protection.

3. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Without prejudice to Article 5.A(3) of the Paris Convention, each Party shall provide that a patent may be revoked or cancelled only on grounds that would have justified a refusal to grant the patent. However, a Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking, canceling, or holding a patent unenforceable.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(b) With respect to any pharmaceutical product that is covered by a patent, each Party shall make available a restoration of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party.

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant, and (b) occurred

within 12 months prior to the date of filing of the application in the territory of the Party.

8. Each Party shall provide patent applicants with at least one opportunity to submit amendments, corrections, and observations in connection with their applications.

9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

10. Each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

11. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility.

Article 15.10. Measures Related to Certain Regulated Products

1. (a) If a Party requires, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, the submission of undisclosed data concerning safety or efficacy, the Party shall not permit third persons, without the consent of the person who provided the information, to market a product on the basis of (1) the information, or (2) the approval granted to the person who submitted the information for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of approval in the Party. (15)

(b) If a Party permits, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously obtained such approval in the other territory, to obtain authorization or to market a product on the basis of (1) evidence of prior marketing approval in the other territory, or (2) information concerning safety or efficacy that was previously submitted to obtain marketing approval in the other territory, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date approval was granted in the Party's territory to the person who received approval in the other territory. In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.

(c) For purposes of this paragraph, a new product is one that does not contain a chemical entity that has been previously approved in the territory of the Party.

(d) For purposes of this paragraph, each Party shall protect such undisclosed information against disclosure except where necessary to protect the public, and no Party may consider information accessible within the public domain as undisclosed data. Notwithstanding the foregoing, if any undisclosed information concerning safety and efficacy submitted to a Party, or an entity acting on behalf of a Party, for purposes of obtaining marketing approval is disclosed by such entity, the Party is still required to protect such information from unfair commercial use in the manner set forth in this Article.

2. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval in the territory of a Party or in another country, that Party:

(a) shall implement measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the previously approved product or its approved use during the term of that patent, unless by consent or acquiescence of the patent owner; and

(b) shall provide that the patent owner shall be informed of the request and the identity of any such other person who requests approval to enter the market during the term of a patent identified as claiming the approved product or its approved use.

(15) Where a Party, on the date it implemented the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use that conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1.

Article 15.11. Enforcement of Intellectual Property Rights

General Obligations

1. Each Party understands that procedures and remedies required under this Article for enforcement of intellectual property rights are established in accordance with:

(a) the principles of due process that each Party recognizes; and

(b) the foundations of its own legal system.

2. This Article does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or

(b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general.

The Parties understand that the decisions that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.

3. Each Party shall provide that final judicial decisions or administrative rulings of general applicability pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall provide that such decisions or rulings shall be published, (16) or where such publication is not practicable, otherwise made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

4. Each Party shall publicize information that it may collect on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal system, including any statistical information.

5. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:

(a) the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram; and

(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies

6. Each Party shall make available to right holders (17) civil judicial procedures concerning the enforcement of any intellectual property right.

7. Each Party shall provide that:

(a) in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and are not taken into account in computing the amount of the damages referred to in clause (i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, the value of the infringed-upon good or service based on the suggested retail price or other legitimate measure of value that the right holder presents.

8. In civil judicial proceedings, each Party shall, at least with respect to civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, establish or maintain pre-established damages as an alternative to actual damages. Such pre-established damages shall be set out in domestic law and determined by the judicial authorities in an amount sufficient to compensate the right holder for the harm caused by the infringement and constitute a deterrent to future infringements.

9. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement and trademark

counterfeiting, that the prevailing party shall be awarded payment of court costs or fees and reasonable attorney's fees by the losing party. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party be awarded payment of reasonable attorney's fees by the losing party.

10. In civil judicial proceedings concerning copyright or related right infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

11. Each Party shall provide that:

(a) its judicial authorities shall have the authority to order, at their discretion, the destruction of the goods that have been found to be pirated or counterfeit;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering requests for such destruction, the Party's judicial authorities may take into account, inter alia, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests;

(c) the charitable donation of counterfeit trademark goods and goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce.

12. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person involved in any aspect of the infringement and regarding the means of production or distribution channel for the infringing goods or services, including the identification of third persons that are involved in their production and distribution and their distribution channels, and to provide this information to the right holder. Each Party shall provide that its judicial authorities shall have the authority to impose sanctions, in appropriate cases, on a party to a proceeding that fails to abide by valid orders issued by such authorities.

13. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those provided for in this Chapter.

14. Each Party shall provide for civil remedies against the acts described in Article 15.5.7 and 15.5.8. Available civil remedies shall include at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) actual damages (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or pre-established damages as provided in paragraph 8;

(c) payment to the prevailing right holder, at the conclusion of civil judicial proceedings, of court costs and fees and reasonable attorneyâs fees by the party engaged in the prohibited conduct; and

(d) destruction of devices and products found to be involved in the prohibited activity, at the discretion of the judicial authorities, as provided in subparagraphs (a) and (b) of paragraph 11.

No Party may make damages available against a nonprofit library, archives, educational institution, or public broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

15. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, inter alia, to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods or to prevent their exportation.

16. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning

the enforcement of intellectual property rights and require that the parties bear the costs of such experts, the Party should seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

(16) A Party may satisfy the requirement for publication by making the document available to the public on the Internet.

(17) For the purpose of this Article, the term "right holder" shall include federations and associations as well as exclusive licensees and other duly authorized licensees, as appropriate, having the legal standing and authority to assert such rights. The term "licensee" shall include the licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

Provisional Measures

17. Each Party shall act on requests for relief inaudita altera parte and execute such requests expeditiously, in accordance with its rules of judicial procedure.

18. Each Party shall provide that its judicial authorities shall have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

19. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

Special Requirements Related to Border Measures

20. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods (18) into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

21. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures for suspension to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party shall provide that such security may take a form of an instrument issued by a financial services provider to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

23. Each Party shall provide that its competent authorities may initiate border measures ex officio, with respect to imported, exported, or in-transit merchandise suspected of infringing an intellectual property right, without the need for a formal complaint from a private party or right holder.

24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by its competent authorities shall be destroyed, pursuant as appropriate to judicial order, unless the right holder consents to an alternate disposition, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

25. Each Party shall provide that where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that unreasonably deters recourse

to such measures.

(18) For purposes of paragraphs 20 through 25: **counterfeit trademark** goods means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and **pirated copyright goods** means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Criminal Procedures and Remedies

26. (a) Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes significant willful infringements of copyright or related rights, for purposes of commercial advantage or private financial gain, as well as willful infringements that have no direct or indirect motivation of financial gain, provided that there is more than a de minimis financial harm. Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities and provide for criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce. (19)

(b) Specifically, each Party shall provide:

(i) remedies that include sentences of imprisonment or monetary fines, or both, sufficient to provide a deterrent to future acts of infringement. Each Party shall establish policies or guidelines that encourage penalties to be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements;

(ii) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order;

(ii) that its judicial authorities shall have the authority to order, among other measures, (1) the forfeiture of any assets traceable to the infringing activity, (2) the forfeiture and destruction of all counterfeit or pirated goods, without compensation of any kind to the defendant, in order to prevent the re-entry of counterfeit and pirated goods into channels of commerce, and (3) with respect to willful copyright or related rights piracy, the forfeiture and destruction of materials and implements that have been used in the creation of the infringing goods; and

(iv) that its authorities may, at least in cases of suspected trademark counterfeiting or copyright piracy, conduct investigations or exercise other enforcement measures ex officio, without the need for a formal complaint by a private party or right holder, at least for the purpose of preserving evidence or preventing the continuation of the infringing activity.

(19) A Party may comply with this subparagraph in relation to exportation through its measures concerning distribution or trafficking.

Limitations on Liability for Service Providers

27. For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright (20) covered under this Chapter, including expeditious remedies to prevent infringements, and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article:

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set out in this subparagraph. (21)

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and

transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an on-line location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to the function referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available on-line in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic on-line location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less

burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice and an opportunity to appear before the Party's judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material on-line unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) Service provider means:

(A) for purposes of the function referred to in clause (i)(A), a provider of transmission, routing, or connections for digital on-line communications without modification of their content between or among points specified by the user of material of the user's choosing; and

(B) for purposes of the functions referred to in clause (i)(B) through (D), a provider or operator of facilities for on-line services or network access.

(20) For purposes of this paragraph, "copyright" shall also include related rights.

(21) The Parties understand that this subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

Additional Procedures and Remedies

28. Annex 15.11 applies between the Dominican Republic and the United States.

Article 15.12. Final Provisions

1. Except as otherwise provided in paragraph 2 and Article 15.1, each Party shall give effect to this Chapter on the date of entry into force of this Agreement.

2. As specified below, a Party may delay giving effect to certain provisions of this Chapter for no longer than the periods in this paragraph, beginning on the date of entry into force of the Agreement:

(a) in the case of Costa Rica:

(i) with respect to Articles 15.4.1 and 15.9.6, one year;

(ii) with respect to Article 15.8.1(b), 18 months;

(iii) with respect to Articles 15.3.7 and 15.5.8(a)(ii), two years;

(iv) with respect to Article 15.11.27, 30 months; and

(v) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, and 15.11.14, three years;

(b) in the case of the Dominican Republic:

(i) with respect to Article 15.5.4, six months;

(ii) with respect to Articles 15.5.9 and 15.9.6, one year;

(iii) with respect to Article 15.2.1, 18 months;

(iv) with respect to Articles 15.3.7, and 15.11.27, two years; and

(v) with respect to Article 15.5.7(a)(ii), 15.5.7(e), and 15.5.7(f), three years.

(c) in the case of El Salvador:

(i) with respect to Article 15.11.27, one year;

(ii) with respect to Article 15.8.1(b), 18 months;

(iii) with respect to Article 15.11.23, two years;

(iv) with respect to Article 15.5.8(a)(ii), 30 months; and

(v) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, and 15.11.14, three years;

(d) in the case of Guatemala:

(i) with respect to Article 15.5.4, six months;

(ii) with respect to Articles 15.5.9 and 15.9.6, one year;

(iii) with respect to Article 15.8, 18 months;

(iv) with respect to Articles 15.2.1, 15.3.7, 15.4, 15.5.8(a)(ii), 15.11.20, 15.11.21, 15.11.22, and 15.11.25, two years;

(v) with respect to Article 15.11.27, 30 months;

(vi) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, 15.11.14, and 15.11.24, three years; and

(vii) with respect to Article 15.11.23, four years;

(e) in the case of Honduras:

(i) with respect to Articles 15.5.9 and 15.9.6, one year;

(ii) with respect to Article 15.8, 18 months;

(iii) with respect to Articles 15.2.1, 15.3.7, 15.4, 15.5.8(a)(ii), 15.11.20, 15.11.21, 15.11.22, and 15.11.25, two years;

(iv) with respect to Article 15.11.27, 30 months;

(v) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, 15.11.14, and 15.11.24, three years; and

(vi) with respect to Article 15.11.23, four years; and

(f) in the case of Nicaragua:

(i) with respect to Articles 15.5.9 and 15.9.6, one year;

(ii) with respect to Article 15.8.1(b), 18 months;

(iii) with respect to Articles 15.3.7, 15.4, 15.5.8(a)(ii), 15.11.20, 15.11.21, 15.11.22, and 15.11.25, two years;

(iv) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, 15.11.14, 15.11.24, and 15.11.27, three years; and

(v) with respect to Article 15.11.23, four years.

Chapter Sixteen. Labor

Article 16.1. Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the JLO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) ILO Declaration) (1). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law.

2. The Parties affirm their full respect for their Constitutions. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.8 and shall strive to improve those standards in that light.

(1) The Parties recall that paragraph 5 of the ILO Declaration states that labor standards should not be used for protectionist trade purposes.

Article 16.2. Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) Each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

Article 16.3. Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's domestic law.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(d) such proceedings do not entail unreasonable charges or time limits or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures, as provided in the Party's laws.

7. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and

(b) encouraging education of the public regarding its labor laws.

8. For greater certainty, decisions or pending decisions by each Party's administrative, quasi-judicial, judicial, or labor tribunals, as well as related proceedings, shall not be subject to revision or be reopened under the provisions of this Chapter.

Article 16.4. Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 16.5, and to pursue the labor objectives of this Agreement. Unless the Parties otherwise agree, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Parties, and with the public, for purposes of carrying out the work of the Council, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Parties and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures. The Council shall develop general guidelines for considering such communications.

4. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee, comprising members of its public, including representatives of its labor and business organizations, to provide views on any issues related to this Chapter.

5. All decisions of the Council shall be taken by consensus. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

6. The Council may prepare reports on matters related to the implementation of this Chapter, and shall make such reports public.

Article 16.5. Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues can play an important role in advancing development in the territory of the Parties and in providing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) (LO Convention 182), the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 16.5. The Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. While endeavoring to strengthen each Party's institutional capacity to fulfill the common goals of the Agreement, the Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism, and the

activities undertaken through that Mechanism:

(a) are consistent with each Party's national programs, development strategies, and priorities;

(b) provide opportunities for public participation in the development and implementation of such objectives and activities; and

(c) take into account each Party's economy, culture, and legal system.

Article 16.6. Cooperative Labor Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 16.4.3.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other Parties. (2)

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 16.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission - Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission on consultations held on the matter.

7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 16.2.1(a).

8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 16.2.1(a) without first pursuing resolution of the matter in accordance with this Article.

9. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

(2) For purposes of paragraphs 4, 5, and 6, the Council shall consist of the cabinet-level representatives of the consulting Parties or their high-level designees.

Article 16.7. Labor Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as panelists in disputes arising under Article 16.2.1(a). Unless the Parties otherwise agree, up to three members of the roster shall be nationals of each Party, and up to seven members of the roster shall be selected from among individuals who are not nationals of any Party. Labor roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Labor roster members shall:

(a) have expertise or experience in labor law or its enforcement, international trade, or the resolution of disputes arising under international agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 16.2.1(a), Article 20.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 16.8. Definitions

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

statutes or regulations means:

(a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, laws of its legislative body or regulations promulgated pursuant to an act of its legislative body that are enforceable by action of the executive body; and

(b) for the United States, acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government.

Annex 16.5. Labor Cooperation and Capacity Building Mechanism

Organization and Principal Functions

1. The Labor Affairs Council working through each Party's contact point shall coordinate the activities of the Labor Cooperation and Capacity Building Mechanism. The contact points shall meet within six months after the date of entry into force of this Agreement and thereafter as often as they consider necessary.

2. The contact points, together with representatives of other appropriate agencies and ministries, shall cooperate to:

(a) establish priorities, with particular emphasis on those subjects identified in paragraph 3 of this Annex, for cooperation and capacity building activities on labor issues;

(b) develop specific cooperative and capacity building activities in accordance with such priorities;

(c) exchange information regarding each Party's labor laws and practices, including best practices, as well as ways to strengthen them; and

(d) seek support, as appropriate, from international organizations such as the International Labor Organization, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters.

Cooperation and Capacity Building Priorities

3. The Mechanism may initiate bilateral or regional cooperative activities on labor issues, which may include, but need not be limited to:

(a) *fundamental rights and their effective application*: legislation and practice related to the core elements of the ILO Declaration (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation);

(b) *worst forms of child labor*: legislation and practice related to compliance with ILO Convention 182;

(c) labor administration: institutional capacity of labor administrations and tribunals, especially training and professionalization of human resources, including career civil service;

(d) labor inspectorates and inspection systems: methods and training to improve the level and efficiency of labor law enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws;

(e) alternative dispute resolution: initiatives aimed at establishing alternative dispute resolution mechanisms for labor disputes;

(f) labor relations: forms of cooperation and dispute resolution to ensure productive labor relations among workers, employers, and governments;

(g) working conditions: mechanisms for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;

(h) migrant workers: dissemination of information regarding labor rights of migrant workers in each Party's territory;

(i) social assistance programs: human resource development and employee training, among other programs;

(j) labor statistics: development of methods for the Parties to generate comparable labor market statistics in a timely manner;

(k) employment opportunities: promotion of new employment opportunities and workforce modernization;

(l) gender, gender issues, including the elimination of discrimination in respect of employment and occupation; and

(m) technical issues: programs, methodologies, and experiences regarding productivity improvement, encouragement of best labor practices, and the effective use of technologies, including those that are Internet-based.

Implementation of Cooperative Activities

4. Pursuant to the Mechanism, the Parties may cooperate on labor issues using any means they deem appropriate, including, but not limited to:

(a) technical assistance programs, including by providing human, technical, and material resources, as appropriate;

(b) exchange of official delegations, professionals, and specialists, including through study visits and other technical exchanges;

(c) exchange of information on standards, regulations, and procedures, and best practices, including pertinent publications and monographs;

(d) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(e) collaborative projects or demonstrations; and

(f) joint research projects, studies, and reports, including by engaging independent specialists with recognized expertise.

Public Participation

5. In identifying areas for labor cooperation and capacity building, and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as those of other members of the public.

Chapter Seventeen. Environment

Article 17.1. Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall

ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.

Article 17.2. Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Partyâs authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 17.3. Procedural Matters

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings, in accordance with its law, are available to sanction or remedy violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law and be open to the public, except where the administration of justice otherwise requires.

(b) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.

(c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

(i) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(ii) may include criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of activities, and requirements to take remedial action or pay for damage to the environment.

2. Each Party shall ensure that interested persons may request the Partyâs competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 1.

4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights such as:

(a) to sue another person under that Party's jurisdiction for damages under that Party's laws;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;

(c) to request that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction that is contrary to that Party's environmental laws or that violates a legal duty under that Party's law relating to human health or the environment.

5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. For greater certainty, nothing in this Chapter shall be construed to call for the examination under this Agreement of whether a Party's judicial, quasi-judicial, or administrative tribunals have appropriately applied that Party's environmental laws.

Article 17.4. Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 17.3. As appropriate and in accordance with its law, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations;

(ii) voluntary guidelines for environmental performance; or

(iii) sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and indicators used in measuring environmental performance; and

(b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Article 17.5. Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Council.

2. The Council shall meet within the first year after the date of entry into force of this Agreement, and annually thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter and to consider the status of cooperation activities developed under the Dominican Republic - Central America - United States - Environmental Cooperation Agreement ("ECA"). Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. The Council shall set its own agenda. In setting the agenda, each Party shall seek views from its public concerning possible issues for discussion.

4. In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work, including by engaging in a dialogue with the public on those issues.

5. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the ECA.

6. All decisions of the Council shall be taken by consensus, except as provided in Article 17.8. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

Article 17.6. Opportunities for Public Participation

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Parties and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.

2. Each Party shall make best efforts to accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.

3, Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, to provide views on matters related to the implementation of this Chapter.

4. The Parties shall take into account public comments and recommendations regarding cooperative environmental activities undertaken pursuant to Article 17.9 and the ECA.

Article 17.7. Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate. (1)

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

(a) is in writing in either English or Spanish; (b) clearly identifies the person making the submission;

(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

(f) is filed by a person of a Party.

3. The Parties recognize that the North American Agreement on Environmental Cooperation ("NAAEC") provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws. (2) In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of a Party other than the United States who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

(a) the submission is not frivolous and alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

(b) of any other information the Party wishes to submit, such as:

(i) whether the matter was previously the subject of a judicial or administrative proceeding;

(ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; or

(iii) information concerning relevant capacity-building activities under the ECA.

(1) The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or other form of agreement between the Parties.

(2) Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, U.S. written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.

Article 17.8. Factual Records and Related Cooperation

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

2. The secretariat shall prepare a factual record if the Council, by a vote of any Party, instructs it to do so.

3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

(a) that is publicly available;

(b) submitted by interested persons;

(c) submitted by national advisory or consultative committees; (d) developed by independent experts; or

(e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The Council may, by a vote of any Party, make the final factual record publicly available, normally within 60 days following its submission.

8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Partyâs mechanisms for monitoring its environmental enforcement.

Article 17.9. Environmental Cooperation

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship, recognizing that cooperation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.

3. The Parties recognize that strengthening their cooperative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services.

4. The Parties have negotiated an ECA. The Parties have identified certain priority areas of cooperation for environmental activities as reflected in Annex 17.9 and as set out in the ECA. The Parties also have established an Environmental Cooperation Commission through the ECA that is responsible for developing, and periodically revising and updating, a work program that reflects each Party's priorities for cooperative environmental programs, projects, and activities.

5. The Parties also recognize the continuing importance of current and future environmental cooperation activities in other fora.

Article 17.10. Collaborative Environmental Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.1.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter and information exchanged by the consulting Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other Parties. (3)

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 17.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission â Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission regarding any consultations held on the matter.

7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1(a).

8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 17.2.1(a) without first pursuing resolution of the matter in accordance with this Article.

9. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

(3) For purposes of paragraphs 4, 5, and 6, the Council shall consist of cabinet-level representatives of the consulting Parties or their designees.

Article 17.11. Environmental Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as panelists in disputes arising under Article 17.2.1(a). Unless the Parties otherwise agree, up to three members of the roster shall be nationals of each Party, and up to seven members of the roster shall be selected from among individuals who are not nationals of any Party. Environment roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Environment roster members shall: (a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade or environmental agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, any Party; and (d) comply with a code of conduct to

be established by the Commission.

3. Where a Party claims that a dispute arises under Article 17.2.1(a), Article 20.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 17.12. Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are all party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.

2. The Parties may consult, as appropriate, with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements.

Article 17.13. Definitions

1. For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human,

animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

For greater certainty, environmental law does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

For purposes of the definition of "environmental law", the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

statute or regulation means:

(a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body; and

(b) for the United States, an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

2. For purposes of Article 17.7.5, judicial or administrative proceeding means:

(a) a domestic judicial, quasi-judicial, or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and

(b) an international dispute resolution proceeding to which the Party is a party.

Annex 17.9. Environmental Cooperation

1. The Parties recognize the importance of protecting, improving, and conserving the environment, including natural resources, in their territories. The Parties underscore the importance of promoting all possible forms of cooperation and reaffirm that cooperation on environmental matters provides enhanced opportunities to advance common commitments to achieve sustainable development for the well-being of present and future generations.

2. Recognizing the benefits that would be derived from a framework to facilitate effective cooperation, the Parties negotiated the ECA. The Parties expect that the ECA will enhance their cooperative relationship, noting the existence of differences in the Partiesâ respective natural endowments, climatic and geographical conditions, and economic, technological, and infrastructure capabilities.

3. As set forth in Article V of the ECA, the Parties have identified the following priorities for environmental cooperation activities:

(a) strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and policies;

(b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;

(c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;

(d) conserving and managing shared, migratory, and endangered species in international trade and management of marine parks and other protected areas;

(e) exchanging information on domestic implementation of multilateral environmental agreements that all the Parties have ratified;

(f) promoting best practices leading to sustainable management of the environment;

(g) facilitating technology development and transfer and training to promote the use, proper operation, and maintenance of clean production technologies;

(h) developing and promoting environmentally beneficial goods and services;

(i) building capacity to promote public participation in the process of environmental decision-making;

(j) exchanging information and experiences between Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level; and

(k) other areas for environmental cooperation on which the Parties may agree.

4. Funding mechanisms for environmental cooperation activities under the ECA are addressed in Article VIII of the ECA.

Chapter Eighteen. Transparency

Section A. Transparency

Article 18.1. Contact Points

1. Each Party shall designate, within 60 days of the date of entry into force of this Agreement, a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 18.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

Article 18.3. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Partyâs interests under this Agreement.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 18.4. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 18.2 to particular persons, goods, or services of another Party in specific cases that:

(a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 18.5. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 18.6. Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Section B. Anti-Corruption

Article 18.7. Statement of Principle

The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment.

Article 18.8. Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption described in paragraph 1.

Article 18.9. Cooperation In International Fora

The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

Article 18.10. Definitions

For purposes of this Section:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.

Chapter Nineteen. Administration of the Agreement and Trade Capacity Building

Section A. Administration of the Agreement

Article 19.1. The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties, as set out in Annex 19.1, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee the further elaboration of this Agreement;

(c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

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

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

3. The Commission may:

(a) establish and delegate responsibilities to committees and working groups;

(b) modify in fulfillment of the Agreement's objectives:

(i) the Schedules attached to Annex 3.3 (Tariff Elimination), by accelerating tariff elimination;

(ii) the rules of origin established in Annex 4.1 (Specific Rules of Origin);

(iii) the Common Guidelines referenced in Article 4.21 (Common Guidelines); and

(iv) Annexes 9.1.2(b)(i), 9.1.2(b) Gi), and 9.1.2(b)(iii) (Government Procurement);

(c) issue interpretations of the provisions of this Agreement;

(d) seek the advice of non-governmental persons or groups; and

(e) take such other action in the exercise of its functions as the Parties may agree.

4. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 3(b) within such period as the Parties may agree.

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, unless the Commission otherwise decides.

6. The Commission shall convene at least once a year in regular session, unless the Commission otherwise decides. Regular sessions of the Commission shall be chaired successively by each Party.

Article 19.2. Free Trade Agreement Coordinators

1. Each Party shall appoint a free trade agreement coordinator, as set out in Annex 19.2.

2. The coordinators shall work jointly to develop agendas and make other preparations for Commission meetings and shall follow-up on Commission decisions, as appropriate.

Article 19.3. Administration of Dispute Settlement Proceedings

1. Each Party shall:

(a) designate an office that shall provide administrative assistance to the panels established under Chapter Twenty (Dispute Settlement) and perform such other functions as the Commission may direct; and

(b) notify the Commission of the location of its designated office.

2. Each Party shall be responsible for:

(a) the operation and costs of its designated office; and

(b) the remuneration and payment of expenses of panelists and experts, as set out in Annex 19.3.

Section B. Trade Capacity Building

Article 19.4. Committee on Trade Capacity Building

1. Recognizing that trade capacity building assistance is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalized trade, the Parties hereby establish a Committee on Trade Capacity Building, comprising representatives of each Party.

2. In furtherance of the Parties' ongoing trade capacity building efforts and in order to assist each Central American Party and the Dominican Republic to implement this Agreement and adjust to liberalized trade, each such Party should periodically update and provide to the Committee its national trade capacity building strategy.

3. The Committee shall:

(a) seek the prioritization of trade capacity building projects at the national or regional level, or both;

(b) invite appropriate international donor institutions, private sector entities, and non- governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;

(c) work with other committees or working groups established under this Agreement, including through joint meetings, in support of the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;

(d) monitor and assess progress in implementing trade capacity building projects; and

(e) provide a report annually to the Commission describing the Committeeâs activities, unless the Committee otherwise decides.

4. During the transition period, the Committee shall meet at least twice a year, unless the Committee otherwise decides.

5. The Committee may establish terms of reference for the conduct of its work.

6. The Committee may establish ad hoc working groups, which may comprise government or non-government representatives, or both.

7. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

8. The Parties hereby establish an initial working group on customs administration and trade facilitation, which shall work under and report to the Committee.

Annex 19.1. The Free Trade Commission

The Free Trade Commission shall be composed of:

(a) in the case of Costa Rica, the Ministro de Comercio Exterior;

(b) in the case of the Dominican Republic, the Secretario de Estado de Industria y Comercio;

(c) in the case of El Salvador, the Ministro de Economia; in the case of Guatemala, the Ministro de Economia;

(d) in the case of Honduras, the Secretario de Estado en los Despachos de Industria y Comercio;

(e) in the case of Nicaragua, the Ministro de Fomento, Industria y Comercio; and

(f) in the case of the United States, the United States Trade Representative,

or their successors.

Annex 19.1.4. Implementation of Modifications Approved by the Commission

1. In the case of Costa Rica, decisions of the Commission under Article 19.1.3(b) will be equivalent to the instrument referred to in article 121.4, third paragraph (protocolo de menor rango) of the ConstituciÃ©n Politica de la Republica de Costa Rica.

2. In the case of Honduras, decisions of the Commission under Article 19.1.3(b) will be equivalent to the instrument referred to in article 21 of the Constitución Politica de la República de Honduras.

Annex 19.2. Free Trade Agreement Coordinators

The free trade agreement coordinators shall consist of:

(a) in the case of Costa Rica, the Director General de Comercio Exterior;

(b) in the case of the Dominican Republic, the Subsecretario de Estado de Industria y Comercio Encargado de Comercio Exterior,

(c) in the case of El Salvador, the Director de la Dirección de Administración de Tratados Comerciales del Ministerio de Economía;

(d) in the case of Guatemala, the Director de Administración de Comercio Exterior del Ministerio de Economía;

(e) in the case of Honduras, the Director General de Política Comercial e Integración Económica de la Secretaria de Estado en los Despachos de Industria y Comercio;

(f) in the case of Nicaragua, the Director General de Comercio Exterior del Ministerio de Fomento, Industria y Comercio; and

(g) in the case of the United States, the Assistant United States Trade Representative for the Americas,

or their successors.

Annex 19.3. Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to panelists and experts.

2. The remuneration of panelists and their assistants, experts, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the disputing Parties.

3. Each panelist and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

Chapter Twenty. Dispute Settlement

Section A. Dispute Settlement

Article 20.1. Cooperation

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

Article 20.2. Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement; and

(c) wherever a Party considers that an actual or proposed measure of another Party causes or would cause nullification or impairment in the sense of Annex 20.2.

Article 20.3. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which the disputing Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Article 20.4. Consultations

1. Any Party may request in writing consultations with any other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. A Party that considers it has a substantial trade interest in the matter may participate in the consultations on delivery of written notice to the other Parties within seven days of the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial trade interest in the matter.

4. Consultations on matters regarding perishable goods (1) shall commence within 15 days of the date of delivery of the request.

5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. In consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations. (2)

(1) For greater certainty, the term "perishable goods" means perishable agricultural and fish goods classified in chapters 1 through 24 of the Harmonized System.

(2) A consulting Party receiving such a request shall strive to accommodate it.

Article 20.5. Commission - Good Offices, Conciliation, and Mediation

1. If the consulting Parties fail to resolve a matter pursuant to Article 20.4 within:

(a) 60 days of delivery of a request for consultations;

(b) 15 days of delivery of a request for consultations in matters regarding perishable goods; or

(c) such other period as they may agree,

any such Party may request in writing a meeting of the Commission. (3)

2. A consulting Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 16.6 (Cooperative Labor Consultations), Article 17.10 (Collaborative Environmental Consultations), or Article 7.8 (Committee on Technical Barriers to Trade).

3. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

4. Unless it decides otherwise, the Commission shall convene within ten days of delivery of the request and shall endeavor to resolve the dispute promptly. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation, or such other dispute resolution procedures; or

(c) make recommendations, as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure or matter. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly. (4)

(3) For purposes of this paragraph and paragraphs 2 and 4, the Commission shall consist of the cabinet-level representatives of the consulting Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

(4) For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the consulting Parties in the relevant proceedings, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

Article 20.6. Request for an Arbitral Panel

1. If the consulting Parties fail to resolve a matter within:

(a) 30 days after the Commission has convened pursuant to Article 20.5

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 20.5.5;

(c) 30 days after a Party has delivered a request for consultations under Article 20.4 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 20.5.4;

(d) 75 days after a Party has delivered a request for consultations under Article 20.4, if the Commission has not convened pursuant to Article 20.5.4; or

(e) such other period as the consulting Parties may agree,

any consulting Party that requested a meeting of the Commission with regard to the measure or other matter in accordance with Article 20.5 may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

2. An arbitral panel shall be established upon delivery of a request.

3. A Party that is eligible under paragraph 1 to request the establishment of a panel and considers it has a substantial interest in the matter may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of the request by the Party for the establishment of a panel.

4. If a Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

(a) a dispute settlement procedure under this Agreement; or

(b) adispute settlement proceeding under the WTO Agreement or under another free trade agreement to which it and the Party complained against are party, on grounds that are substantially equivalent to those available to it under this Agreement,

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

6. An arbitral panel may not be established to review a proposed measure.

Article 20.7. Roster

1. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain a roster of up to 70 individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, up to eight members of the roster shall be nationals of each Party, and up to 14 members of the roster shall be selected from among individuals who are not nationals of any Party. The roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, andshall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct to be established by the Commission.

Article 20.8. Qualifications of Panelists

All panelists shall meet the qualifications set out in Article 20.7.2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 20.5.4.

Article 20.9. Panel Selection

1. The Parties shall apply the following procedures in selecting a panel:

(a) the panel shall comprise three members;

(b) the disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the chair shall be selected by lot within three days from among the roster members who are not nationals of a disputing Party;

(c) within 15 days of selection of the chair, the complaining Party or Parties shall select one panelist and the Party complained against shall select one panelist;

(d) if the complaining Party or Parties or the Party complained against fail to select a panelist within this period, the panelist shall be selected by lot within three days from among the roster members who are nationals of such Party or Parties, as the case may be; and

(e) each disputing Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.

2. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

3. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 20.10. Rules of Procedure

1. The Commission shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure:

(a) aright to at least one hearing before the panel, which, subject to subparagraph (ec), shall be open to the public;

(b) an opportunity for each disputing Party to provide initial and rebuttal written submissions;

(c) that each participating Party's written submissions, written versions of its oral statement, and written responses to a

request or questions from the panel shall be public, subject to subparagraph (e);

(d) that the panel will consider requests from non-governmental entities in the disputing Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties; and

(e) the protection of confidential information.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. The Commission may modify the Model Rules of Procedure.

4. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the panel request and to make findings, determinations, and recommendations as provided in Articles 20.10.6 and 20.13.3 and to deliver the written reports referred to in Articles 20.13 and 20.14."

5. If a complaining Party in its panel request has identified that a measure has nullified or impaired benefits, in the sense of Annex 20.2, the terms of reference shall so indicate.

6. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party ofa Partyâs failure to conform with the obligations of this Agreement or of a Partyâs measure found to have caused nullification or impairment in the sense of Annex 20.2, the terms of reference shall so indicate.

Article 20.11. Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties, shall be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties in accordance with the Model Rules of Procedure. Those submissions shall be reflected in the final report of the panel.

Article 20.12. Role of Experts

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 20.13. Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information before it pursuant to Article 20.12.

2. If the disputing Parties request, the panel may make recommendations for resolution of the dispute.

3. Unless the disputing Parties otherwise agree, the panel shall, within 120 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 20.10 may provide, present to the disputing Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 20.10.6;

(b) its determination as to whether a disputing Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Annex 20.2, or any other determination requested in the terms of reference; and

(c) its recommendations, if the disputing Parties have requested them, for resolution of the dispute.

4. When the panel considers that it cannot provide its report within 120 days, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. In no case should the period to provide the report exceed 180 days. The panel shall inform the disputing Parties of any determination under this paragraph no later than seven days after the initial written submission of the complaining Party or Parties and shall adjust the remainder of the schedule accordingly.

5. Panelists may furnish separate opinions on matters not unanimously agreed.

6. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report or within such other period as the disputing Parties may agree.

7. After considering any written comments on the initial report, the panel may reconsider its report and make any further examination it considers appropriate.

Article 20.14. Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 20.15. Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a disputing Party has not conformed with its obligations under this Agreement or that a disputing Party's measure is causing nullification or impairment in the sense of Annex 20.2, the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment. (5)

3. Where appropriate, the disputing Parties may agree on a mutually satisfactory action plan to resolve the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel. If the disputing Parties agree on such an action plan, a complaining Party may have recourse to Article 20.16.2 or Article 20.17.1, as the case may be, only if it considers that the Party complained against has failed to carry out the action plan. (6)

(5) Compensation, the payment of monetary assessments, and the suspension of benefits are intended as temporary measures pending the elimination of any non-conformity or nullification or impairment that the panel has found.

(6) For greater certainty, as part of an action plan the disputing Parties may undertake, modify, or enhance cooperation activities.

Article 20.16. Non-Implementation - Suspension of Benefits

1. If a panel has made a determination of the type described in Article 20.15.2, and the disputing Parties are unable to reach agreement on a resolution pursuant to Article 20.15 within 45 days of receiving the final report, or such other period as the disputing Parties agree, the Party complained against shall enter into negotiations with the complaining Party or Parties with a view to developing mutually acceptable compensation.

2. If the disputing Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 20.15 and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

any such complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 6, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the disputing Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. In considering what benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 20.2; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

6. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the complaining Party that it will pay an annual monetary assessment. The disputing Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

7. Unless the Commission otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. dollars, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Commission may decide that an assessment shall be paid into a fund established by the Commission and expended at the direction of the Commission for appropriate initiatives to facilitate trade between the disputing Parties, including by further reducing unreasonable trade barriers or by assisting a disputing Party in carrying out its obligations under this Agreement. (7)

8. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

9. This Article shall not apply with respect to a matter described in Article 20.17.1.

(7) For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the disputing Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

Article 20.17. Non-Implementation In Certain Disputes

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 16.2.1(a) (Enforcement of Labor Laws) or Article 17.2.1(a) (Enforcement of Environmental Laws), and the disputing Parties:

(a) are unable to reach agreement on a resolution pursuant to Article 20.15 within 45 days of receiving the final report; or

(b) have agreed on a resolution pursuant to Article 20.15 and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

any such complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the Party complained against. The complaining Party shall deliver its request in writing to the Party complained against. The panel shall reconvene as soon as possible after delivery of the request.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

(a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;

(b) the pervasiveness and duration of the Party's failure to effectively enforce the televant law;

(c) the reasons for the Party's failure to effectively enforce the relevant law, including, where relevant, its failure to observe the terms of an action plan;

(d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;

(e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel, including through the implementation of any mutually agreed action plan; and

(f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20.17.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any time thereafter, the complaining Party may provide notice in writing to the Party complained against demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. dollars, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning 60 days after the complaining Party provides such notice.

4. Assessments shall be paid into a fund established by the Commission and shall be expended at the direction of the Commission for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Commission shall consider the views of interested persons in the disputing Partiesâ territories. (8)

5. If the Party complained against fails to pay a monetary assessment, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

(8) For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the disputing Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

Article 20.18. Compliance Review

1. Without prejudice to the procedures set out in Article 20.16.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party or Parties. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits that Party has or those Parties have suspended under Article 20.16 or Article 20.17 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 20.16.6 or that has been imposed on it under Article 20.17.1.

Article 20.19. Five-Year Review

The Commission shall review the operation and effectiveness of Articles 20.16 and 20.17 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 20.20. Referral of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 20.21. Private Rights

No Party may provide for a right of action under its law against any other Party on the ground that the other Party has failed to conform with its obligations under this Agreement.

Article 20.22. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

4. The Commission may establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes.

This committee shall:

(a) report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use, and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area; and

(b) when the committee considers appropriate, promote technical cooperation between the Parties, in furtherance of the objectives identified in paragraph 1.

Annex 20.2. Nullification or Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Chapters Three through Five (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, and Customs Administration and Trade Facilitation);

(b) Chapter Seven (Technical Barriers to Trade);

(c) Chapter Nine (Government Procurement);

(d) Chapter Eleven (Cross-Border Trade in Services); or

(e) Chapter Fifteen (Intellectual Property Rights),

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke paragraph 1(d) or (e) with respect to any measure subject to an exception under Article 21.1 (General Exceptions).

Annex 20.17. Inflation Adjustment Formula for Monetary Assessments

1. An annual monetary assessment imposed before December 31, 2005 shall not exceed 15 million dollars (U.S.).

2. Beginning January 1, 2006, the 15 million dollar (U.S.) annual cap shall be adjusted for inflation in accordance with paragraphs 3 through 5.

3. The period used for the accumulated inflation adjustment shall be calendar year 2004 through the most recent calendar year preceding the one in which the assessment is owed.

4. The relevant inflation rate shall be the U.S. inflation rate as measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics.

5. The inflation adjustment shall be estimated according to the following formula: $15 million x (1+ πi) =A

πi = accumulated U.S. inflation rate from calendar year 2004 through the most recent calendar year preceding the one in which the assessment is owed.

A= cap for the assessment for the year in question.

Chapter Twenty-One. Exceptions

Article 21.1. General Exceptions

1. For purposes of Chapters Three through Seven (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Thirteen, and Fourteen (1) (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) This Article is without prejudice to whether digital products should be classified as goods or services.

Article 21.2. Essential Security

Nothing in this Agreement shall be construed:

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

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 21.3. Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between two or more Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 3.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article

shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.10 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 11.2 (National Treatment) and Article 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment) and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in those Articles shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.9.2, 10.9.3, and 10.9.4 (Performance Requirements) shall apply to taxation measures.

6. Article 10.7 (Expropriation and Compensation) and Article 10.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.7 as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.7 with respect to a taxation measure must first refer to the competent authorities of the Parties of the claimant and the respondent set out in Annex 21.3 at the time that it gives its notice of intent under Article 10.16.2 the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16.

Article 21.4. Balance of Payments Measures on Trade In Goods

Should a Party decide to impose measures for balance of payments purposes, it shall do so only in accordance with that Partyâs rights and obligations under the GATT 1994, including the Declaration on Trade Measures Taken for Balance of Payments Purposes (1979 Declaration) and the Understanding on the Balance of Payments Provisions of the GATT 1994 (BOP Understanding). In adopting such measures, the Party shall immediately consult with the other Parties and shall not impair the relative benefits accorded to the other Parties under this Agreement. (2)

(2) For greater certainty, this Article applies to balance of payments measures imposed on trade in goods.

Article 21.5. Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would

prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 21.6. Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include:

(a) a customs duty; or

(b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

Annex 21.3. Competent Authorities

For purposes of this Chapter:

competent authorities means

(a) in the case of Costa Rica, the Viceministro de Hacienda;

(b) in the case of the Dominican Republic, the Subsecretario de Estado de Finanzas;

(c) in the case of El Salvador, the Viceministro de Hacienda;

(d) in the case of Guatemala, the Viceministro de Finanzas Piblicas;

(e) in the case of Honduras, the Subsecretario en el Despacho de Finanzas;

(f) in the case of Nicaragua, the Viceministro de Hacienda y Crédito Público; and

(g) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury,

or their successors.

Chapter Twenty-Two. Final Provisions

Article 22.1. Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 22.2. Amendments

1. The Parties may agree on any amendment of this Agreement. The original English and Spanish texts of any amendment shall be deposited with the Depositary, which shall promptly provide a certified copy to each Party.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement to take effect on the date on which all Parties have notified the Depositary in writing that they have approved the amendment or on such other date as the Parties may agree.

Article 22.3. Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the relevant provision of this Agreement, as appropriate, in accordance with Article 22.2.

Article 22.4. Reservations

No Party may enter a reservation in respect of any provision of this Agreement without the written consent of the other Parties.

Article 22.5. Entry Into Force

1. (a) This Agreement shall enter into force on January 1, 2005, provided that the United States and one or more other signatories notify the Depositary in writing by that date that they have completed their applicable legal procedures.

(b) If this Agreement does not enter into force on January 1, 2005, this Agreement shall enter into force after the United States and one or more other signatories make such a notification, on such later date as they may agree.

2. Thereafter, this Agreement shall enter into force for any other signatory 90 days after the date on which that signatory notifies the Depositary in writing that it has completed its applicable legal procedures. Unless the Parties otherwise agree, a signatory may not provide a notification under this paragraph later than two years after the date of entry into force of this Agreement.

3. The Depositary shall promptly inform the Parties and non-Party signatories of any notification under paragraph 1 or 2.

Article 22.6. Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each Party and acceding country.

2. The instrument of accession shall be deposited with the Depositary, which shall promptly inform each Party of the accession.

Article 22.7. Withdrawal

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. The Depositary shall promptly inform the Parties of such notification.

2. A withdrawal shall take effect six months after a Party provides written notice under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

Article 22.8. Depositary

The original English and Spanish texts of this Agreement shall be deposited with the General Secretariat of the Organization of American States, which shall serve as depositary. The Depositary shall promptly provide a certified copy of the original texts to each signatory.

Article 22.9. Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE, at Washington in English and Spanish, on this 5" day of August, 2004.

FOR THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA:

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC:

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR:

FOR THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA:

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:

FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Annex I. Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.13 (Non- Conforming Measures) and 11.6 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Articles 10.3 (National Treatment) or 11.2 (National Treatment);

(b) Articles 10.4 (Most-Favored-Nation Treatment) or 11.3 (Most-Favored-Nation Treatment);

(c) Article 11.5 (Local Presence);

(d) Article 10.9 (Performance Requirements);

(e) Article 10.10 (Senior Management and Boards of Directors); or

(f) Article 11.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non- Conforming Measures), do not apply to the listed measure(s);

(c) Level of Government indicates the level of government maintaining the listed measure(s);

(d) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Article 10.13 (Non-Conforming Measures) and 11.6 (Non- Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the law, regulation, or other measure identified in the Measures element of that entry.

5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.5 (Local Presence) shall operate as a Schedule entry with respect to Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), or 10.9 (Performance Requirements) to the extent of that measure.

6. For greater certainty, Article 11.4 (Market Access) refers to non-discriminatory measures.

Annex I. Schedule of Costa Rica

Sector: Irrigation Services

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 7593 of 9 August 1996 - Ley de la Autoridad Reguladora de los Servicios Públicos - Arts. 5, 9, and 13

Description: Cross-Border Services

Costa Rica reserves the right to limit the number of concessions to supply irrigation services based on demand for those services.

Priority will be given to concessionaires already supplying the service.

Sector: Solid Waste Treatment Services

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 7593 of 9 August 1996 - Ley de la Autoridad Reguladora de los Servicios Públicos - Arts. 5, 9, and 13

Description: Cross-Border Services

Costa Rica reserves the right to limit the number of concessions to supply solid waste treatment services based on demand for those services. Priority will be given to concessionaires already supplying the service.

Sector: Maritime and Specialty Air Services

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 7593 of 9 August 1996 - Ley de la Autoridad Reguladora de los Servicios Públicos - Arts. 5, 9, and 13

Description: Cross-Border Services

Costa Rica reserves the right to limit the number of concessions to supply maritime and specialty air services in national ports based on demand for those services. Priority will be given to concessionaires already supplying the service.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures:

Law No. 7221 of 6 April 1991 - Ley Orgánica del Colegio de Ingenieros Agrónomos - Arts. 5, 6, 8, 10, 15, 16, 18, 19, 20, 23, 24, and 25

Executive Decree No. 22688-MAG-MIRENEM of 22 November 1993 - Reglamento General de la Ley Orgánica del Colegio de Ingenieros Agrónomos de Costa Rica - Arts. 6, 7, and 9

Executive Decree No. 29410 of 2 March 2001 - Reglamento del Registro de Peritos-Tasadores del Colegio de Ingenieros Agrónomos - Arts. 6, 20, and 22

Law No. 5230 of 2 July 1973 - Ley Orgánica del Colegio de Geólogos de Costa Rica - Arts. 3, and 9

Executive Decree No. 6419-MEIC of 18 October 1976 – Reglamento del Colegio de Geólogos de Costa Rica – Arts. 4, 5, and 37

Law No. 5142 of 30 November 1972 – Ley Orgánica del Colegio de Farmacéuticos de Costa Rica – Arts. 2, 9, and 10

Executive Decree No. 3503-S of 6 February 1974 – Reglamento General Orgánico o Reglamento Interno del Colegio de Farmacéuticos de Costa Rica – Art. 2 and 6

Law No. 5784 of 19 August 1975 – Ley Orgánica del Colegio de Cirujanos Dentistas de Costa Rica – Arts. 2, 6, 9, 10, 14, and 15

Law No. 4925 of 17 December 1971 – Reforma Integral a la Ley Orgánica del Colegio Federado de Ingenieros y Arquitectos – Arts. 5, 9, 11, 13, 14, and 52

Executive Decree No. 3414-T of 3 December 1973 – Reglamento Interior General del Colegio Federado de Ingenieros y Arquitectos de Costa Rica –Arts. 1, 3, 7, 9, and 54

Reglamento Especial de Incorporación al Colegio Federado de Ingenieros y Arquitectos de Costa Rica, approved in Session 4-82-A.E.R., 6 December 1982 – Arts. 7 and 8

Reglamento Especial para Determinar Inopia de Profesionales para los Efectos de Miembro Temporal o Incorporación de Extranjeros al Colegio Federado de Ingenieros y de Arquitectos de Costa Rica, approved in Session 45-82-GE of December 1982 –Arts. 1, 2, 3, 4, 5, 6, 7, and 8

Law No. 1038 of 19 August 1947 – Ley de Creación del Colegio de Contadores Públicos – Arts. 3, 4, 12, and 15

Law No. 3455 of 14 November 1964 – Ley Orgánica del Colegio de Médicos Veterinarios – Arts. 2, 4, 5, 7, and 27

Executive Decree No. 19184-MAG of 10 July 1989 – Reglamento a la Ley Orgánica del Colegio de Médicos Veterinarios – Arts. 6, 7, 10, 11, 19, and 24

Law No. 2343 of 4 May 1959 – Ley Orgánica del Colegio de Enfermeras de Costa Rica – Arts. 2, 22, 23, 24, and 28

Executive Decree No. 11 of 10 August 1961 – Reglamento de la Ley Número 2343 del 4 de mayo de 1959 que Crea el Colegio de Enfermeras de Costa Rica – Arts. 9, 10, 53, 54, and 67

Law No. 7764 of 17 April 1998 – Código Notarial – Arts. 3 and 10

Law No. 1269 of 2 March 1951 – Ley Orgánica del Colegio de Contadores Privados de Costa Rica– Arts. 2 and 4

Law No. 6038 of 13 January 1977 – Ley Orgánica del Colegio de Químicos e Ingenieros Químicos de Costa Rica – Arts. 5, 10, 14, 15, 16, 17, 18, 19, 20, and 71

Executive Decree No. 11275-P of 27 February 1980 – Reglamento a la Ley Orgánica de Químicos e Ingenieros Químicos de Costa Rica – Arts. 1, 2, 3, 8, 9, and 83

Law No. 3019 of 9 August 1962 – Ley Orgánica del Colegio de Médicos y Cirujanos – Arts. 4, 5, and 7

Executive Decree No. 23110-S of 22 March 1991 – Reglamento a la Ley Orgánica del Colegio de Médicos y Cirujanos – Art. 10

Executive Decree No. 2613-SPSS of 3 November 1972 – Reglamento General para Autorizar el Ejercicio a Profesionales de Ramas Dependientes de las Ciencias Médicas y a Técnicos en Materias Médico Quirúrgicas – Arts. 1 and 4

Law No. 3838 of 19 December 1966 – Ley Orgánica del Colegio de Optometristas de Costa Rica – Arts. 6 and 7

Law No. 4420 of 18 September 1969 – Ley Orgánica del Colegio de Periodistas de Costa Rica – Arts. 2, 24, 25, and 27

Executive Decree No. 14931 of 20 October 1983 – Reforma al Reglamento de la Ley Orgánica del Colegio de Periodistas de Costa Rica – Arts. 5, 6, and 26

Law No. 7106 of 4 November 1988 – Ley Orgánica del Colegio de Profesionales en Ciencias Políticas – Arts.6, 26, and 29

Executive Decree No. 19026-P of 31 May 1989 – Reglamento a la Ley Orgánica del Colegio de Profesionales en Ciencias Políticas y de Relaciones Internacionales – Arts. 1, 10, 12, 19, 21, and 22

Law No. 8356 of 12 June 2002 – Reforma Ley Orgánica del Colegio de Profesionales en Ciencias Políticas – Art. 1

Law No. 4288 of 12 December 1968 – Ley Orgánica del Colegio de Biólogos – Arts. 6 and 7

Executive Decree No. 39 of 6 March 1970 – Reglamento de la Ley Orgánica del Colegio de Biólogos de Costa Rica – Arts.10, 11, 16, 17, 18, and 19

Reglamento a la Ley Orgánica al Colegio de Bibliotecarios de Costa Rica, approved in the ordinary General Assembly of 2 October 1991 – Arts. 12 and 17

Law No. 7537 of 22 August 1995 – Ley Orgánica del Colegio de Profesionales en Informática y Computación – Arts. 6 and 8

Law No. 8142 of 17 October 2001 – Ley de Traducciones e Interpretaciones Oficiales – Art. 6

Executive Decree No. 30167-RE of 25 January 2002 – Reglamento a la Ley de Traducciones e Interpretaciones Oficiales – Art. 10

Law No. 7105 of 31 October 1988 – Ley Orgánica del Colegio de Licenciados en Ciencias Económicas de Costa Rica – Arts. 4, 6, 15, 19, and 20

Executive Decree No. 20014-MEIC of 19 September 1990 – Reglamento General de Profesionales en Ciencias Económicas de Costa Rica – Arts. 10, 14, and 17

Law No. 7503 of 3 May 1995 – Ley Orgánica del Colegio de Físicos – Arts. 6 and 10

Executive Decree No. 28035-MINAE-MICIT of 14 April 1999 – Reglamento a la Ley Orgánica del Colegio de Físicos – Arts. 6, 7, 10, 11, 18, and 21

Law No. 6144 of 28 November 1977 – Ley Orgánica del Colegio Profesional de Psicólogos de Costa Rica – Arts. 4, 5, and 6

Reglamento General del Colegio Profesional de Psicólogos de Costa Rica, approved in Session No. 3 of the Ordinary General Assembly of 09 March 1979 – Arts. 9, 10, and 11

Executive Decree No. 28595-S of 23 March 2000 – Reglamento de la Ley Orgánica del Colegio de Profesionales en Quiropráctica – Art. 15

Description: Cross-Border Services and Investment

To join the Professional Associations of Public Accountants, Pharmacists, Geologists, Physicians and Surgeons, Veterinarians, Lawyers (i.e., Notaries), Dental Surgeons, Optometrists, Journalists, Nurses, Medical and Surgical Technicians and Medical Sciences Branches, all foreign professionals must prove that, in their home jurisdiction where they are allowed to practice, Costa Rican nationals can exercise their profession under like circumstances.

To join the Professional Associations of Public Accountants, Pharmacists, Geologists, Agronomical Engineers (Forestry or Agriculture/Livestock Appraisers-Surveyors), Physicians and Surgeons, Veterinarians, Dental Surgeons, Journalists, Medical and Surgical Technicians and Medical Sciences Branches, Computer and Information Technology, Nurses and Official Translators and Interpreters, foreign professionals must have the migratory status of residents in Costa Rica at the time of applying for membership, as well as have a certain minimum number of years of residence.

The number of years varies from one Professional Association to another, but usually ranges between two to five years.

To join the Professional Associations of Lawyers (i.e., Notaries), Chemists and Chemical Engineers, Political Scientists and International Relations Specialists and Physicists, foreign professionals must have the migratory status of residents in Costa Rica at the time of applying for membership.

Only Costa Rican professionals duly registered in the Colegio de Ingenieros AgrÃ©nomos can supply their services for consulting enterprises in agronomical sciences operating in Costa Rica to comply with the 50 percent legal requirement of total professional consulting advisory time.

Consulting or advisory work in the field of agronomical sciences carried out in Costa Rica under the auspices of foreign governments or international institutions shall be jointly conducted by Costa Rican nationals registered in the Colegio, along with foreign nationals.

Foreign professionals in political sciences and international relations specialists may only be hired by public or private entities when they are active members of the Professional Association and insufficiency of Costa Rican professionals has been declared.

For greater certainty, subject to the conditions and terms included in the applicable legislation, the following professional associations may provide temporary licenses to allow temporary professional practice in Costa Rica: Biologists, Economists and Social Scientists, Political Scientists and International Relations Specialists, Dental Surgeons, Pharmacists, Physicists, Computer and Information Technology Professionals, Agronomical Engineers, Architects and Engineers, Physicians and Surgeons, Veterinarians, Journalists, Psychologists, Chemists and Chemical Engineers and Chiropractors.

For greater certainty, none of the measures listed in this Annex entry restricts enterprises in Costa Rica from otherwise employing foreign professionals in accordance with Costa Rican law in order to carry out contracts.

Sector: Maritime-Land Zone

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 6043 of 2 March 1977 - Ley sobre la Zona Maritimo Terrestre - Arts. 9, 10, 11, and 12, and Chapters 3 and

Description: Cross-Border Services and Investment

A concession is required to perform any type of development or activity in the maritime-terrestrial zone. (1) Such a concession shall not be granted to or held by: (a) foreign nationals that have not resided in the country for at least five years; (b) enterprises with bearer shares; (c) enterprises domiciled abroad; (d) enterprises incorporated in the country solely by foreign nationals; or (e) enterprises where more than 50 percent of the capital shares or stocks are owned by foreigners.

Within the maritime-terrestrial zone, no concession may be granted within the first 50 meters counted from the high tide line nor in the area comprised between the high tide line and the low tide line.

(1) The maritime-terrestrial zone is the 200-meter strip located along the entire length of the Atlantic and Pacific coast lines of Costa Rica, measured horizontally from the ordinary high tide line. The maritime-terrestrial zone also covers all islands located within the Costa Rican territorial waters.

Sector: Land Transportation Services - Transportation of Passengers

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Market Access (Article 11.4)

Level of Government: Central

Measures:

Executive Decree No. 26 of 10 November 1965 – Reglamento del Transporte Internacional de Personas – Arts. 1, 3, 4, 5, 9, 15, and 16 as amended by Executive Decree No. 20785-MOPT of 4 October 1991 – Art. 1

Law No. 3503 of 10 May 1965 – Ley Reguladora del Transporte Remunerado de Personas en Vehículos Automotores – Arts. 1, 3, 4, 6, 10, 11, and 25

Executive Decree No. 31180-MOPT of 24 April 2003 – Regula el Servicio Público de Transporte Remunerado de Personas en Modalidad de Taxi – Art. 1

Law No. 7969 of 22 December 1999 – Ley Reguladora del Servicio Público de Transporte Remunerado de Personas en Vehículos en la Modalidad de Taxis – Arts. 1, 2, 3, 29, 30, and 33

Executive Decree No. 5743-T of 12 February 1976 – Reglamento a la Ley Reguladora del Transporte Remunerado de Personas en Vehículos Taxis – Arts. 1, 2, 5, and 14

Executive Decree No. 28913-MOPT of 13 September 2000 – Reglamento del Primer Procedimiento Especial Abreviado para el Transporte Remunerado de Personas en Vehículos en la Modalidad de Taxi – Arts. 1, 3, and 16

Law No. 5066 of 30 August 1972 – Ley General de Ferrocarriles – Arts. 1, 4, 5, and 41

Executive Decree No. 28337-MOPT of 16 December 1999 – Reglamento sobre Políticas y Estrategias para la Modernización del Transporte Colectivo Remunerado de Personas por Autobuses

Urbanos para el Área Metropolitana de San José y Zonas Aledañas que la Afecta Directa o Indirectamente – Art. 1

Executive Decree No 15203-MOPT of 22 February 1984 Reglamento para la Explotación de Servicios Especiales de Transporte Automotor Remunerado de Personas – Arts. 2, 3, 4, and 5

Law No. 7593 of 9 August 1996 – Ley de la Autoridad Reguladora de los Servicios Públicos – Arts. 5, 9, 10, and 13

Description: Cross-Border Services and Investment

Costa Rica reserves the right to limit the number of concessions to operate domestic remunerated passenger transportation routes in automotive vehicles (including special passenger transportation services as defined in Articles 2 and 3 of Executive Decree No. 15203-MOPT of 22 February 1984 - Reglamento para la Explotacion de Servicios Especiales de Transporte Automotor Remunerado de Personas). Such concessions shall be awarded through bidding, which shall only be opened if the Ministerio de Obras Piblicas y Transportes has previously determined the need to supply the service according to the proper technical studies.

Where there are multiple bids, including one by a Costa Rican supplier, that satisfy the requirements to the same extent, the

Costa Rican bid shall be preferred over the foreign bid, whether by natural persons or enterprises.

A permit to operate an international remunerated passenger transportation service shall be granted only to enterprises organized under Costa Rican law or those that are at least 60 percent owned by Central American nationals.

In addition to the restriction set out above, when granting permits to supply international services for remunerated passenger transportation, the principle of reciprocity shall apply.

A permit is required in order to supply international remunerated passenger land transportation services. New concessions may be granted if justified by demand for the service. Priority will be given to concessionaires already supplying the service.

Costa Rica reserves the right to limit the number of permits or concessions to supply domestic remunerated passenger land transportation services based on demand for the service. Priority will be given to concessionaires already supplying the service.

The Ministerio de Obras Piblicas y Transportes reserves the right to set annual limits on the number of concessions for taxi cab services to be granted in each district, county (cantón), and province. Only one taxi cab concession may be granted to each natural person, and each concession grants the right to operate only one vehicle. Bids for taxi concesions are awarded based on a point system that gives an advantage to existing suppliers.

Each concession to supply regular public remunerated passenger transportation services in automotive vehicles, excluding taxi cabs, may be granted only to one person, unless an economic needs test evidences the need to have additional suppliers. In addition, one natural person may not own more than two enterprises nor be a majority shareholder in more than three enterprises operating different routes.

Permission to supply non-tour bus passenger transportation services in the greater metropolitan area of the Central Valley of Costa Rica shall only be granted once it has been demonstrated that regular public bus services cannot satisfy the demand.

Costa Rica reserves the right to maintain a monopoly over the supply of railroad transportation. However the State can grant concessions to private persons. Concessions may be granted if justified by demand for the service. Priority will be given to concessionaires already supplying the service.

Sector: Land Transportation Services - Freight Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 11.4)

Level of Government: Central

Measures: Executive Decree No. 31363 of 02 June 2003 – Reglamento de Circulación por Carretera con base en el Peso y las Dimensiones de los Vehículos de Carga – Art. 69

Executive Decree No. 15624-MOPT of 28 August 1984 – Reglamento del Transporte Automotor de Carga Local – Arts. 8, 9, 10, and 12

Law No. 7593 of 9 August 1996 – Ley de la Autoridad Reguladora de los Servicios Públicos – Arts. 5, 9, and 13

Description: Cross-Border Services and Investment

Only Costa Rican nationals or enterprises may supply motorized transportation services between two points within the territory of Costa Rica. Such an enterprise must meet the following requirements: (a) at least 51 percent of its capital must be owned by Costa Rican nationals; and (b) Costa Rican nationals must have effective control and management of the enterprise.

No motor vehicle, trailer, or tractor-trailer with foreign license plates may transport goods within the territory of Costa Rica. This prohibition does not apply to vehicles, trailers, or tractor-trailers registered in one of the Central American countries.

Foreign enterprises involved in international multi-modal freight transportation must contract enterprises organized under the laws of Costa Rica to transport containers and tractor-trailers within Costa Rica.

Costa Rica reserves the right to grant concessions to supply railroad freight transportation services based on demand for the service. Priority will be given to concessionaires already supplying the service.

Sector: Water Transportation Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5)

Level of Government: Central

Measures: Law No. 7593 of 9 August 1996 – Ley de la Autoridad Reguladora de los Servicios Públicos – Arts. 5, 9, and 13

Law No. 104 of 06 June 1853 – Código de Comercio de 1853 - Libro III Del Comercio Marítimo – Arts. 537 and 580

Law No. 12 of 22 October 1941 – Ley de Abanderamiento de Barcos – Arts. 41 and 43

Law No. 2220 of 20 June 1958 – Ley de Servicio de Cabotaje de la República – Arts. 5, 7, 8, 9, 11, and 12

Executive Decree No. 66 of 4 November 1960 – Reglamento de la Ley de Servicios de Cabotaje de la República – Arts. 10, 11, 12, 15, and 16

Executive Decree No. 12568-T-S-H of 30 April 1981 – Reglamento del Registro Naval Costarricense – Arts. 8, 10, 11, 12, and 13

Executive Decree No. 23178-J-MOPT of 18 April 1994 – Traslada Registro Nacional Buques al Registro Público Propiedad Mueble – Art. 5

Description: Cross-Border Services and Investment

Costa Rica reserves the right to limit the number of concessions to water transportation services based on demand for those services. Priority will be given to concessionaires already supplying the service.

A concession to supply cabotage services shall only be granted to Costa Rican nationals or enterprises organized under Costa Rican law of which at least 60 percent of the shares are owned by Costa Rican nationals.

Only Costa Rican nationals, national public entities, enterprises constituted and domiciled in Costa Rica, and shipping company representatives can register vessels in Costa Rica. This rule may not apply to foreign nationals or foreign enterprises registering vessels smaller than 50 tons for non-commercial use only.

All natural persons or enterprises established abroad that own one or more foreign registered vessels located in Costa Rica shall appoint and maintain an agent or legal representative in Costa Rica to act as liaison with the official authorities in all vessel-related matters.

Trade and tourist cabotage activities between Costa Rican ports must be conducted by vessels registered in Costa Rica.

Foreign nationals who wish to act as captain of a vessel with Costa Rican registry and flag must post a bond equivalent to at least half of the value of the vessel under his/her command.

At least ten percent of the crew on Costa Rican registered vessels used for international traffic that call on Costa Rican ports shall be Costa Rican nationals, provided that such trained personnel are available domestically.

Sector: Specialty Air Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Law No. 5150 of 14 May 1973 – Ley General de Aviación Civil – Arts. 143, 156, paragraphs 3 and 4, and 179

Executive Decree No. 3326-T of 25 October 1973 – Reglamento para el Otorgamiento de Certificados de Explotación – Arts. 5 and 6

Executive Decree No. 4440-T of 3 January 1975 – Reglamento para la Operación del Registro Aeronáutico Costarricense – Art. 20 and 38

Executive Decree No. 4637- T of 18 February 1975 – Reglamento de Licencias para Personal Técnico Aeronáutico – Art. 23

Executive Decree No. 31520-MS-MAG-MINAE-MOPT-MGPSP of 16 October 2003 – Reglamento para las Actividades de Aviación Agrícola – Arts. 10, 11, 13, 24, and 41

Executive Decree No. 28262-MOPT of 1 November 1999 – Reglamento de Certificados de Operador Aéreo (COA), Certificados Operativos y Autorizaciones de Operación (RAC 119) – Sections 119.33 and 119.47

Description: Cross-Border Services

Costa Rican enterprises interested in obtaining a provider certificate for any aeronautical service, including specialty air services, must demonstrate that effective control and management of the enterprise, and at least 51 percent of the capital, are in the hands of Costa Rican nationals.

Certificates for the supply of any aeronautical service shall be issued to enterprises constituted under foreign law, based on the principle of reciprocity.

Every holder of a provider certificate must maintain an operation and maintenance base in Costa Rica.

Sector: Air Transportation Services

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Law No. 5150 of 14 May 1973 – Ley General de Aviación Civil – Arts. 36, 37, 42, 149, 156, and 179

Executive Decree No. 3326-T of 25 October 1973 – Reglamento para el Otorgamiento de Certificados de Explotación – Arts. 5 and 6

Executive Decree No. 4440-T of 3 January 1975 – Reglamento para la Operación del Registro Aeronáutico Costarricense – Arts. 20 and 38

Executive Decree No. 4637-T of 18 February 1975 – Reglamento de Licencias para Personal Técnico Aeronáutico – Art. 23

Description: Investment

Only Costa Rican nationals or enterprises may supply domestic air transport services, whether regular or non-regular.

In order to supply these services, the Costa Rican enterprise must meet the following requirements: (a) at least 51 percent of its capital must be owned by Costa Rican nationals; and (b) effective control and management of the enterprise must be in the hands of Costa Rican nationals. Foreign nationals cannot be members of the Board of Directors of such enterprises.

Only Costa Rican nationals or enterprises may register aircraft in the Registro Aerondutico Costarricense to be used for remunerated airborne activities.

Foreign nationals that legally reside in the country may also register aircraft used exclusively for non-commercial purposes.

In the absence of agreements or conventions, certificates for the supply of international air transportation shall be issued based on the principle of reciprocity.

Sector: Tourist Guides

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Executive Decree No. 31030-MEIC-TUR of 17 January 2003 - Reglamento de los Guias de Turismo - Art. 11

Description: Cross-Border Services

Only Costa Rican nationals may apply for tour guide licenses.

Sector: Travel Agencies and Tourism

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 5339 of 24 August 1973 - Ley Reguladora de las Agencias de Viajes - Art. 8

Executive Decree No. 24863-H-TUR of 5 December 1995 - Reglamento de la Ley de Incentivos para el Desarrollo Turistico- Art. 16

Description: Cross-Border Services

Costa Rica reserves the right to limit the number of travel agencies authorized to operate in Costa Rica based on demand for that service.

Sector: Transportation Services - Custom Brokers - Assistant Custom Brokers - Custom Transportation Agents

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Law No. 7557 of 20 October 1995 - Ley General de Aduanas y sus reformas - Arts. 28, 29, 33, 35, 40, 41, 44, 46, and 49

Executive Decree No. 25270-H of 14 June 1996 - Reglamento a la Ley General de Aduanas - Arts. 77, 78, and 113

Description: Cross-Border Services

Only persons or enterprises that have a legal representative and corporate headquarters in Costa Rica may act as a customs transportation agent, international freight agent, customs depositary, or other public function customs auxiliary.

Only Costa Rican nationals may act as customs brokers.

Sector: Telecommunications Related Services - Radio and Television

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 11.4)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art.121 paragraph 14

Law No. 1758 of 19 June 1954 – Ley de Radio y Televisión – Arts. 1, 2, 3, and 7

Executive Decree No. 21 of 29 September 1958 – Reglamento para la Operación de Radiodifusoras de Televisión – Art. 4

Executive Decree No. 63 of 11 December 1956 – Reglamento de Estaciones Inalámbricas – Arts. 7, 13, 15, and 30

Description: Cross-Border Services and Investment

In Costa Rica, wireless services may not be permanently removed from State ownership and may be supplied only by the public administration or by private parties, in accordance with the law or under a special concession granted for a limited period of time and on the basis of conditions and stipulations to be established by the Legislative Assembly.

Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may establish or manage an enterprise that supplies wireless services. This restriction does not apply to the establishment and operation of ham radio stations, but rights shall not be granted to a foreign national residing in Costa Rica when the country of origin of the foreign national does not grant that same right to Costa Rican nationals.

Only a Costa Rican national or enterprise that has nominal capital stock and is owned by Costa Rican nationals may obtain a license for Ultra High Frequency (UHF) radio broadcasting services.

Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may obtain a license or be awarded a free over the air broadcast television channel for signals that originate in Costa Rica.

Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may obtain a license to operate radio; ham radio; radio-television; and maritime, aeronautical, meteorological, and private broadcasting stations.

Directors and administrators of enterprises supplying radio and television services must be Costa Rican by birth or must have been naturalized Costa Ricans for at least ten years.

The right to establish radiographic stations in Costa Rica for transmission or reception of official messages is permanently reserved to the State, and is not subject to concession.

Sector: Wholesale and Retail Distribution - Crude Oil and Its Derivatives

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 7356 of 24 August 1993 – Ley del Monopolio Estatal de Hidrocarburos Administrado por Recope "Establece Monopolio a favor del Estado para la Importación, Refinación y Distribución de Petróleo, Combustibles, Asfaltos y Naftas" – Art.1

Law No. 7593 of 9 August 1996 – Ley de la Autoridad Reguladora de los Servicios Públicos – Arts. 5, 9, and 13

Description: Cross-Border Services

Wholesale distribution of crude oil and its derivatives - including fuel, asphalt, and naphtha - is subject to a State monopoly.

Costa Rica reserves the right to limit the number of concessions for retail distributors of crude oil and its derivates - including fuel, asphalt, and naphtha - based on demand for the service. Priority will be given to concessionaires already supplying the service.

Sector: Services Incidental to Mining - Hydrocarbon Exploration

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art. 121

Law No. 7399 of 3 May 1994 – Ley de Hidrocarburos – Arts. 1 and 22

Executive Decree No. 24735-MIRENEM of 29 September 1995 – Reglamento a la Ley de Hidrocarburos – Art. 17

Executive Decree No. 28148-MINAE of 30 August 1999 – Reglamento de Cesión de Derechos y Obligaciones de Contratos de Exploración y Explotación de Hidrocarburos – Art. 3

Description: Cross-Border Services

If the recipient of a concession for hydrocarbon exploration and other services incidental to the mining of hydrocarbons that is organized under the law of a foreign country, it must have a branch office and legal representative in Costa Rica.

Sector: Mining and Services Incidental to Mining - Ores Other than Hydrocarbons

Obligations Concerned: Market Access (Article 11.4) National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art. 121, paragraph 14

Law No. 6797 of 4 October 1982 – Código de Minería – Arts. 1, 4, 6, 7, 9, 11, 66, 67, 69, 70, 71, and 74

Description: Cross-Border Services and Investment

Exploration and other services incidental to the mining of any radioactive minerals in Costa Rica may be supplied only by the State or by private parties under a concession, in accordance with the Constitution.

Concessions for mining or exploration of ores other than hydrocarbons may not be granted to foreign governments or their representatives. Concessionaires that are enterprises organized under foreign law or natural persons not resident in Costa Rica must appoint a legal representative with full powers of attorney to acquire rights and enter into obligations on behalf of the represented natural persons or enterprise, and must also maintain an office in Costa Rica.

Banks of the Costa Rican Banking System shall not grant funds in an amount greater than ten percent of the total investment to enterprises with more than 50 percent foreign ownership.

Only individuals can constitute mining cooperatives, and 75 percent of the members must be Costa Rican nationals.

Sector: Scientific and Research Services

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Law No. 7788 of 30 April 1998 - Ley de Biodiversidad - Art. 63

Description: Cross-Border Services

Foreign nationals or enterprises domiciled abroad that supply scientific research and bioprospecting (2) services with regard to biodiversity (3) in Costa Rica shall designate a legal representative that resides in Costa Rica.

(2) Bioprospecting includes the systematic search, classification, and investigation, for commercial purposes, of new sources of chemical compounds, genes, proteins, microorganisms, and other products with real or potential economic value found in biodiversity.

(3) Biodiversity includes the variability of live organisms of any source, found in land, air, marine, aquatic, or other ecological ecosystems, as well as the diversity within each species and between species and the ecosystems of which they are a part. Biodiversity also includes intangible elements such as: the knowledge, innovation, and individual or collective traditional practice, with real or potential economic value, associated with genetic and bio-chemical resources protected or not by intellectual property rights or sui generis registry systems.

Sector: Free Zones

Obligations Concerned: Performance Requirements (Article 10.9)

Level of Government: Central

Measures: Law No. 7210 of 23 November 1990 - Ley de Régimen de Zonas Francas - Art. 22

Executive Decree No. 29606-H-COMEX of 18 June 2001 - Reglamento a la Ley de Régimen de Zonas Francas - Arts. 55 and 57

Description: Investment

An enterprise established in the Free Zone in Costa Rica may not introduce more than 25 percent of its total sales in goods or 50 percent of its total sales in services into Costa Rica's customs territory. An enterprise established in the Free Zone in Costa Rica that only repackages or redistributes goods but does not alter them may not introduce any such goods into Costa Rica's customs territory.

Sector: Services Incidental to Agriculture and Forestry

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Law No. 7317 of 30 October 1992 - Ley de Conservación de la Vida Silvestre - Arts. 28, 29, 31, 38, 39, 64, and 66

Executive Decree No. 26435-MINAE of 1 October 1997 - Reglamento a la Ley de Conservacion de la Vida Silvestre - Art. 32

Description: Cross-Border Services

A license for scientific or cultural collection of species shall be issued for a maximum of one year for nationals or residents, and six months or less for all other foreigners.

Nationals and residents shall pay a lower fee than non-resident foreigners to obtain the license referred to above.

Sector: Fisheries and Services Incidental to Fishing

Obligations Concerned: National Treatment (Article 10.3) Performance Requirements (Article 10.9)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art. 6

Law 190 of 28 September 1948 – Ley de Pesca y Caza Marítimas – Art. 7

Law No. 6267 of 29 August 1978 – Reforma a la Ley de Pesca y Barcos de Bandera Extranjera en Mar Patrimonial – Arts. 3, 5, and 14

Executive Decree No. 23943-MOPT-MAG of 5 January 1995 – Reglamento Regulador del Procedimiento para Otorgar Licencias de Pesca a Buques Extranjeros que Deseen Ejercer la Actividad de Pesca en Aguas Jurisdiccionales Costarricenses – Art. 6

Executive Decree No. 12737-A of 23 June 1981 – Reserva con Exclusividad la Pesca para Fines Comerciales a Costarricenses –

Art. 1

Executive Decree No. 17658-MAG of 17 July 1987 – Clasifica Permisos para Pesca de Camarones en el Litoral Pacífico – Arts. 1, 2, and 3

Description: Investment

The State exercises complete and exclusive sovereignty over its territorial waters within a distance of 12 miles measured from the low-tide mark along its shores, over its continental shelf, and its insular undersea base, in accordance with principles of international law. It also exercises special jurisdiction over the seas adjacent to its territory within a distance of two hundred miles measured from the same mark, in order to protect, preserve, and exploit exclusively all the natural resources and wealth existing in the waters, soil, and subsoil of those zones, in accordance with those principles.

Catch of shrimp and fish with scales may only be allowed in Costa Rica with vessels built in the country with wood obtained in Costa Rica and made by Costa Rican nationals.

Foreign flag fishing vessels may pay lower fees and benefit from automatic renewal of fishing permits if they supply their catch to national enterprises. National enterprises are those with at least 51 percent of their capital belonging to Costa Rican nationals.

Commercial fishing within the 12 miles of Costa Rican territorial waters is exclusively reserved to Costa Rican nationals and Costa Rican enterprises with at least 51 percent of their capital belonging to Costa Rican nationals that fish with vessels flying the Costa Rican flag.

The commercial catch of shrimp in Costa Rican territorial waters of the Pacific Ocean is reserved to vessels with Costa Rican registry and flag owned by Costa Rican nationals.

Sector: Electric Energy

Obligations Concerned: Market Access (Article 11.4) Local Presence (Article 11.5) National Treatment (Articles 10.3 and 11.2)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art. 121

Law No. 7200 of 28 April 1990 – Ley que Autoriza la Generación Eléctrica Autónoma o Paralela – Arts. 1, 2, 3, 5, 7, and 26 as amended by Law No. 7508 of 09 May 1995 – Ley sobre Reforma a la Ley que Autoriza la Generación Autónoma o Paralela – Arts. 2 and 3

Law No. 7789 of 30 April 1998 – Transformación de la Empresa de Servicios Públicos de Heredia – Art. 15

Executive Decree No. 20346 MIRENEM of 21 March 1991 – Reglamento a la Ley que Autoriza la Generación Eléctrica Autónoma o Paralela – Arts. 4, 5, 6, and 8

Executive Decree No. 24866-MINAE of 12 December 1995 – Reglamento al Capítulo II de la Ley de Generación Paralela: Régimen de Competencia – Art. 34

Law No. 7593 of 9 August 1996 – Ley de la Autoridad Reguladora de los Servicios Públicos – Arts. 5, 9, and 13

Law No. 8345 of 20 February 2003 – Ley de Participación de las Cooperativas de Electrificación Rural y de las Empresas de Servicios Públicos Municipales en el Desarrollo Nacional – Arts. 1, 2, 3, 6, 7, 9, 11, 12, and 13

Description: Cross-Border Services and Investment

Costa Rica reserves the right to grant concessions for the transmission, distribution, and trade of electric energy by legislation based on demand for the service. Priority will be given to concessionaires already supplying the service.

For greater certainty, some of the enterprises that currently have concessions to supply these services include: Instituto Costarricense de Electricidad (ICE); Empresa de Servicios Piblicos de Heredia; Junta Administrativa del Servicio Eléctrico

Municipal de Cartago (JASEC), Compafita Nacional de Fuerza y Luz; and cooperative associations, cooperative consortiums, and public municipal service enterprises in accordance with the provisions of Law No. 8345.

All of these enterprises may enter into joint ventures with public or private enterprises to supply their services, subject to the provisions stipulated by law. In the case of Empresa de Servicios Piblicos de Heredia, no less than 51 percent of the capital of the private enterprise may be owned by Costa Rican nationals.

Private persons may invest in activities for the operation of limited capacity power plants (4) not exceeding 20,000 kW, provided they meet the following requirements:

(a) ICE may purchase electricity from enterprises in which no less than 35 percent of the capital is owned by Costa Rican nationals.

(b) Enterprises organized under foreign law that sign a power purchase contract with ICE must establish a branch office in Costa Rica.

(4) For greater certainty, ICE may authorize the operation of a limited capacity plant, provided that the power generated by all such private plants in Costa Rica does not represent more than 15 percent of the total power produced by all public and private plants in the national electric system. Also for greater certainty, any power generated using water in the public domain may be provided only by the State or by private parties, under a concession, in accordance with the Constitution.

Sector: Higher Education Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Executive Decree No. 30431 of 23 April 2002 - Reglamento de la Educación Superior Parauniversitaria - Arts. 6 and 61, paragraph (d)

Description: Cross-Border Services and Investment

No less than 85 percent of the faculty, administrative faculty, and administrative staff of a private institute of higher education must be Costa Rican nationals.

Sector: Human Health Service Professionals - Physicians and Surgeons, Dental Surgeons, Microbiologists, Pharmacists, Nurses, and Nutritionists

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Law No. 7559 of 9 November 1995 - Ley de Servicio Social Obligatorio para los Profesionales en las Ciencias de la Salud - Arts. 2, 3, 5, 6, and 7

Executive Decree No. 25068 of 21 March 1996 - Reglamento de Servicio Social Obligatorio para los Profesionales en Ciencias de la Salud - Arts.7, 13, 14, 17, 18, 21, and 22

Executive Decree No. 25841-S of 5 February 1997 - Reforma al Reglamento de Servicio Social Obligatorio para los Profesionales en Ciencias de la Salud - Art. 1

Description: Cross-Border Services

All Physicians and Surgeons, Dental Surgeons, Microbiologists, Pharmacists, Nurses, and Nutritionists must perform the equivalent of a one-year continuous, remunerated mandatory social services requirement.

The assignment of the slots to perform mandatory social services is made through a drawing. If there are enough slots to perform mandatory social services for all applicants, applicants who are Costa Rican nationals are given priority over applicants who are foreign nationals with respect to assignment of the specific slots.

If the number of slots offered in the drawing is less than the number of applicants, applicants who are Costa Rican nationals shall have the priority to freely choose if they want to participate or not in the drawing. Such choice shall be respected as long as the number of applicants who do not wish to choose a slot is equal to or less than the number of shortage of slots. When the number of applicants who are Costa Rican nationals that do not wish to participate in the drawing exceeds the number of shortage of slots, a lottery shall be made among them to determine who shall participate in the drawing of slots.

If there is still a shortage of slots when the applicants who are Costa Rican nationals have already made their choice, the same procedure shall be applied for the drawing of slots among applicants who are foreign nationals.

Subject to the conditions and terms included in the legislation and regulations applicable to each professional category

listed above, the mandatory social service requirement may be waived for temporary professional practice.

Sector: Audiovisuals - Advertising - Services of Cinema, Radio, Television, and Other Shows

Obligations Concerned: Performance Requirements (Article 10.9) Local Presence (Article 11.5) National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 6220 of 20 April 1978 - Regula Medios de Difusión y Agencias de Publicidad - Art. 3

Law No. 1758 of 19 June 1954 â Ley de Radio y Television â Att. 11

Executive Decree No. 12764-G of 22 June 1981 - Reglamenta Ley de Publicidad - Arts. 1 and 5

Description: Cross-Border Services and Investment

Mass media and advertising services may only be provided by entrerprises incorporated in Costa Rica with nominative stock or established as âsociedades personalesâ under Costa Rican law.

Radio and television programs must observe the following rules:

- If the commercials consist of jingles recorded abroad, a lump sum must be paid every time the commercial is aired on domestically transmitted television. Only 30 percent of the commercials aired on each domestic television station or projected in each cinema may originate from abroad.

- Commercials imported in a physical medium from outside the Central American region and aired on domestically transmitted television must pay a tax equivalent to 100 percent of the declared value of the production of the commercial. Radio, movie, or television commercials are considered national when they are produced in any of the Central American countries with which there is reciprocity in the matter.

-The number of radio programs and radio soap operas recorded abroad may not exceed 50 percent of the total number aired per domestically transmitted radio station per day.

- The number of programs filmed or videotaped abroad may be limited to 60 percent of the total number of programs aired on domestically transmitted television per day.

Radio, movie, or television commercials are considered national when at least 90 percent of the jingle has been composed or arranged by Costa Rican nationals, at least 90 percent of the image has been drawn, photographed, printed, filmed, or videotaped by Costa Rican nationals, and when at least 90 percent of the technical personnel participating in the overall production are Costa Rican nationals.

Sector: News Agency Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Executive Decree No. 14931-C of 20 October 1983 - Reforma Reglamento Ley Organica Colegio Periodistas - Arts. 6 and 26

Executive Decree No. 15294-C of 27 February 1984

Description: Cross-Border Services

Except as authorized, a journalist who is a foreign national may cover events in Costa Rica only if he or she is a resident of Costa Rica.

The Board of Directors of the Colegio de Periodistas may grant non-resident foreign nationals a special permit to cover events in Costa Rica for up to one year and may extend that period, provided that doing so does not harm or conflict with the interests of members of the Colegio de Periodistas.

If the Colegio de Periodistas decides that an event of international importance will or has occurred in Costa Rica, the Colegio de Periodistas may grant a non-resident foreign national with appropriate professional credentials a temporary permit to cover the event for the foreign media the journalist represents. Such permit may be valid for up to one month after the event.

Sector: Sports Services and Other Entertainment Services

Obligations Concerned: Market Access (Article 11.4) National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Law No. 7744 of 19 December 1997 - Ley de Concesión y Operación de Marinas Turísticas - Arts. 1, 12, and 21

Executive Decree No. 27030-TUR-MINAE-MOPT of 20 May 1998 - Reglamento a la Ley de Concesión y Funcionamiento de Marinas Turísticas - Art. 52

Description: Cross-Border Services and Investment

To obtain concessions to develop tourism marinas or docking facilities, enterprises with their principal place of business abroad must be established in Costa Rica.

Foreign nationals shall appoint a representative with sufficient legal authority and with permanent residence in Costa Rica.

All foreign flag vessels using marina services may remain in the Costa Rican exclusive economic zone for a maximum period of two years, extendable for like periods. While in Costa Rica, foreign flag vessels and their crew cannot supply water transportation services or fishing, diving, or other sports or tourism-related activities, except tourism cruises.

Sector: Railroads, Ports, and Airports

Obligations Concerned: Market Access (Article 11.4) Local Presence (Article 11.5)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art.121, paragraph 14

Law No. 7762 of 14 April 1998 – Ley General de Concesión de Obras Públicas con Servicios Públicos – Arts. 2, 3, 4, 5, and 31

Description: Cross-Border Services

National railroads, docks, and airports - the latter while in use - may not be sold, leased or encumbered, directly or indirectly, or be otherwise removed from State ownership and control.

The Executive Branch may grant concessions for railroads, railways, docks, and international airports. In the case of Limon, Moin, Caldera, and Puntarenas docks, concessions may only be granted for future works or expansions.

All enterprises holding railroad, port or airport concession must be organized under Costa Rican law and domiciled in Costa Rica.

Sector: Wireless Services

Obligations Concerned: Market Access (Article 11.4) National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Level of Government: Central

Measures: Constitución Política de la República de Costa Rica – Art. 121, paragraph 14

Law No. 1758 of 19 June 1954 – Ley de Radio y Televisión – Arts. 1, 2, 3, and 25

Description: Cross Border Services and Investment

In Costa Rica, wireless services may not be permanently removed from State ownership and may be supplied only by the public administration or by private parties, in accordance with the law or under a special concession granted for a limited period of time and on the basis of conditions and stipulations to be established by the Legislative Assembly.

The right to establish radiographic stations in Costa Rica for transmission or reception of official messages, is permanently reserved to the State, and is not subject to concession.

Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may establish or manage an enterprise that supplies wireless services. This restriction does not apply to the establishment and operation of ham radio stations, but rights shall not be granted to a foreign national residing in Costa Rica when the country of origin of the foreign national does not grant that same right to Costa Rican nationals.

Notwithstanding the measures listed above, including any requirements regarding ownership of capital by Costa Rican nationals, Costa Rica shall allow telecommunications services providers of another Party, on a non-discriminatory basis, to effectively compete to supply directly to the customer, through the technology of their choice, the following telecommunications services in its territory: (5)

(i) private network services (6), no later than January 1, 2006;

(ii) Internet services, (7) no later than January 1, 2006; and

(iii) mobile wireless services (8), no later than January 1, 2007.

(5) If Costa Rica requires a license for the provision of a listed service, Costa Rica shall make licenses available within the timeframes specified in this subparagraph.

(6) Private network services (closed-user group services) mean networks provided for communications with no interconnection to the public switched telecommunications network at either end. Nothing in this Annex shall be construed to prevent Costa Rica from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

(7) Internet services shall include electronic mail; retrieval and processing on-line information and databases and electronic data exchange services, and offering the ability to access the Internet.

(8) Mobile wireless services mean voice, data, and/or broadband services provided by radio electric means in specifically allocated bands, using mobile or fixed terminal equipment, using cellular, PCS (Personal Communications Service), satellite, or any other similar technology that may be developed in the future for these services.

Sector: On Premise Supply of Liquors for Consumption

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 10 of 7 October 1936 - Ley sobre la Venta de Licores - Arts. 8, 11, and 16

Description: Cross-Border Services

Municipalities decide the number of establishments selling liquor that can be authorized in each one of the areas under their jurisdiction. In no case can this number exceed the following proportion:

(a) in province capitals, one establishment selling foreign liquor and one establishment selling domestic liquor per three hundred residents;

(b) in all other cities with over one thousand inhabitants, one establishment selling foreign liquor per five hundred residents and one establishment selling domestic liquor per three hundred residents;

(c) cities under one thousand residents but over five hundred residents may have two establishments selling foreign liquor and two selling domestic liquor; and

(d) any other cities with five hundred residents or less may have one establishment selling foreign liquor and one establishment selling domestic liquor.

No establishment for on-premise supply of liquors for consumption will be allowed outside the perimeter of cities or where no permanent police authority exists.

In a public auction, no person may receive authorization for more than one establishment selling foreign liquor and one establishment selling domestic liquor in the same city.

Sector: Lottery Sale Services

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Law No. 7395 of 3 May 1994 - Ley de Loterías - Art. 2

Law No. 1387 of 21 November 1951 - Ley de Rifas y Loterías - Art. 1

Description: Cross-Border Services

The Junta de Protección Social de San José shall be the sole manager and distributor of lottery, except for the "Juego Crea".

All lottery, "tiempos", raffles, and clubs that award prizes consisting of payments in cash are prohibited, except for the "Juego Crea" and those issued by the Junta de Protección Social de San José.

Annex I. Schedule of the Dominican Republic

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Measures: - Ley sobre Inversión Extranjera, No. 16-95, November 20, 1995,

Ley General sobre Medio Ambiente y Recursos Naturales, No. 64-00, August 18, 2000, Art. 101

Description: Investment Only Dominican nationals may perform activities related to the disposal of toxic, hazardous, or dangerous or radioactive waste produced outside the Dominican Republic.

Sector: Professional Services - Legal Services

Obligations Concerned: National Treatment (Article 11.2) Market Access (Article 11.4)

Measures:

- Ley del Notariado, No. 301, June 18, 1964, Arts. 4, 5, and 10

- Ley de Organizacion Judicial, y sus modificaciones, No. 821, November 21, 1927, Chapter XI, Art. 73

- Ley que crea el Colegio de Abogados, No. 91, February 3, 1983, Art. 4

Description: Cross-Border Services

To practice law before the courts in the Dominican Republic or to render public notary services a lawyer must be a Dominican national and a member of the Colegio de Abogados.

A foreign lawyer may render legal services other than those related to the judicial function or appearing in court provided the foreign lawyer is a member of the Colegio de Abogados.

A foreign lawyer who is not a member of the Colegio de Abogados may supply foreign legal consulting services provided that the foreign lawyer is licensed to practice law in a jurisdiction that permits Dominican nationals to supply foreign legal consulting services. The Dominican Republic shall permit foreign lawyers who are supplying foreign legal consulting services from the territory of a Party into the territory of the Dominican Republic in the period preceding the date of signature of this Agreement to continue supplying such services.

The authorization of new notaries public is subject to quotas, proportional to the number of inhabitants in each municipality and the national district.

A foreign lawyer may become a member of the Colegio de Abogados:

(a) by obtaining a law degree in the Dominican Republic;

(b) by obtaining revalidation of a law degree issued in a foreign country; or

(c) if the government of a jurisdiction in which the foreign national has a license to practice law has an agreement with the Dominican Republic establishing reciprocal treatment for Dominican lawyers.

For purposes of this entry:

(a) lawyer means in general all persons who, in the exercise of a function and by reason of special knowledge regarding the law, render legal advice, and includes professors and researchers working in universities, all the judges of the Dominican Republic, court-appointed lawyers (abogados de oficio), public prosecutors, public notaries, legal advisors and consultants to

natural or corporate persons, public or private; and

(b) foreign legal consulting service means providing advice by a lawyer regarding matters with respect to which the lawyer or law firm is authorized to render legal services in his, her, or its home market.

Sector: Professional Services - Architectural and Engineering Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Measures:

- Ley sobre el Ejercicio de Ingenieria, la Arquitectura, la Agrimensura y Profesiones Afines, No. 6200, February 22, 1962, Arts. 17, 18, and 19

- Decreto que Reglamenta el Ejercicio Rrofesional del Ingeniero Quimico, No.511-86, June 26, 1986, Arts. 8, 9, and 10

- Ley sobre la PromociÃ©n del Desarrollo Turistico en Destinos Subdesarrollados y en Nuevos Destinos en Provincias y Localidades con Potencial Extraordinario, que Crea el Fondo Oficial para la PromociÃ©n del Turismo, No. 158-01, October 9, 2001, Art. 14

Description: Cross-Border Services

Only members of the Colegio Dominicano de Ingenieros, Arquitectos y Agrimensores de la Republica Dominicana ("CODIA") may practice as engineers, architects, and land surveyors. A foreign professional who meets the relevant qualifications may join CODIA as long as Dominican nationals are not prohibited from practicing in the jurisdiction in which the foreign professional is licensed.

However, professionals who graduated from foreign universities who are not members of CODIA may practice in the Dominican Republic when:

(a) the Executive Branch, in special and justified cases, contracts their services to perform specialized jobs or technical consulting in those fields of the profession in which such services are necessary; or

(b) an enterprise or institution contracts the professional to supply a specific service for a specified time and sufficiently demonstrates the necessity for this to CODIA, which will then authorize the professional to supply the service.

A Dominican chemical engineer must review the plans for and installation of any production facility constructed in the Dominican Republic by foreign technicians or enterprises. In addition, if foreign technicians whose activities are related to the chemical engineering field are used in the installation or start up of a production facility, at least one Dominican chemical engineer must have a role in their supervision.

After the installation and start-up of a production facility, the facility may not employ foreign technicians related to the field of chemical engineering if Dominican engineers with the relevant expertise are available. If no qualified Dominican engineer is available, an enterprise may employ foreign technicians, but only as long as their number is proportionate to the number of Dominican technicians. (1) However, this requirement does not apply to enterprises that employ at least one Dominican engineer.

To provide architectural and engineering services related to construction, persons who are not members of CODIA must associate with a CODIA member.

A Dominican professional must prepare any projects and preliminary plans that are submitted to qualify for benefits from the Fondo Oficial de Promocion Turistica.

Foreign nationals and enterprises organized under foreign law must associate with an enterprise organized under Dominican law in order to provide services related to urban and architectural studies for a tourism-related project.

(1) In practice, an enterprise may meet this requirement at any time by employing three Dominican technicians for every seven foreign technicians.

Sector: Professional Services Accounting, Auditing, and Bookkeeping Services.

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5) Market Access (Article 11.4)

Measures:

- Decreto que aprueba el Reglamento Interno del Instituto de Contadores Piblicos Autorizados de la Reptiblica Dominicana, No. 2032, June 1, 1984, Art. 6

- CÃ©digo de Etica Profesional del Instituto de Contadores Piblicos Autorizados de la Reptblica Dominicana (ICPARD), October 9, 2001, Art. 3.2.13

Description: Cross-Border Services

Only Dominican nationals may practice as Certified Public Accountants in the Dominican Republic. Foreign public accountants, auditors, or bookkeepers, as individuals or enterprises, may practice their profession only in association with a Dominican accountant.

Sector: Professional Services - Health Services and Related Professions

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Measures:

- Ley General de Salud, No.42-01, March 8, 2001, Arts. 92 and 93 - Ley que crea el Colegio Dominicano de Psicdlogos/as, No. 22- 01, February 1, 2001, Art. 4-c

- Ley que Establece un Impuesto sobre los Honorarios Cobrados por Médicos Extranjeros que Ejerzan en la República Dominicana, No. 3491, March 6, 1953, Art. 1 (2)

Description: Cross-Border Services

Foreign nationals graduated from foreign universities may practice health-related professions in the Dominican Republic provided that:

(a) there is an agreement between governments allowing professionals to practice in both countries;

(b) the service is not offered or is insufficient in the Dominican Republic; and

(c) the foreigner has the degree certified for equivalency and obtains an exequdtur from the Executive Branch.

However, health professionals authorized by the Secretaria de Estado de Salud Pública y Asistencia Social (SESPAS) may practice their profession provided they are visiting the country to render public health services on a non-profit basis.

Other health professionals may practice medicine or surgery on a temporary basis if requested or contracted by a clinic or hospital of the Dominican Republic and authorized by SESPAS and by the Asociación Médica Dominicana. For greater certainty, such temporary practice may include training, demonstration, lecturing, or research through a health-related facility, including a university or laboratory. Before leaving the country, the facility or the foreign health professional must present a declaration to SESPAS stating in detail the amounts, if any, the professional has charged to private patients.

To offer psychology services in the Dominican Republic a professional must be permanent resident.

(2) The reference in Article 1 of Law No. 3491 to Law No. 289 does not signify that Article 1, 2, or 3 of Law No. 289 is a measure within the scope of this entry.

Sector: Energy Related Services

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 11.4)

Measures:

- Ley General de Electricidad, No. 125-01, July 26, 2001, Art. 53 - Ley General de Reforma de la Empresa Publica, No. 141-97, June 24, 1997, Arts. 13 and 14

Description: Cross-Border Services

Three joint ventures currently distribute electricity on an exclusive basis within specified regions of the Dominican Republic pursuant to concessions granted by the Government of the Dominican Republic.

Sector: Mining

Obligations Concerned: National Treatment (Article 10.3)

Measures: - Ley de Minería de la República Dominicana, No. 146, June 4, 1971, Art. 9

Description: Investment

Mining concessions may not be granted to any foreign government either directly or through the intermediation of a natural person or an enterprise. In duly justified cases, and with the prior approval of the National Congress, the Executive Branch may enter into special agreements with foreign mining enterprises that are partially or wholly state-owned.

Sector: Communications - Audio-Visual Services

Obligations Concerned: Performance Requirements (Article 10.9) National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Measures: - Decreto que introduce modificaciones en el Reglamento No. 824, del 25 de marzo de 1971, sobre la Operación de la Comisión Nacional de Espectáculos Públicos y Radiodifusión, No. 4306, February 22, 1974, Arts. 101 and 109

Description: Cross-Border Services and Investment

Only Dominican nationals may work as announcers for a radio or television broadcast to a national audience in the territory of the Dominican Republic. However, the ComisiÃ©n Nacional de Espectaculos Publicos y Radiofonia may authorize enterprises that make such broadcasts, in special cases and for a period of six months, to hire foreign nationals to serve as announcers. This authorization may be extended at the discretion of the National Commission for Public Entertainment and Radio.

Only Dominican nationals may serve as sports narrators, including commercial announcers and commentators, in transmitting sporting events for a national audience in the Domincan Republic. However, foreign nationals may serve as sports narrators as long as in their country of origin Dominican sportscasters may also do so.

In all radio programming that originates in the Dominican Republic, 50 percent of the music played shall be by Dominican authors, composers, and singers.

For every three soap operas that are broadcast for a national audience in the Dominican Republic, one must be by Dominican authors and must have been made in the Dominican Republic.

Sector: Communications - Advertising Services

Obligations Concerned: National Treatment (Article 11.2)

Measures:

- Reglamento sobre la Operación de la Comisión Nacional de Espectáculos Públicos y Radiodifusión, No. 824, March 25, 1971, Art. 74.

Description: Cross-Border Services

Seventy-five percent of all artists, announcers, singers and other participants in the production of any jingle, video, tape, script, advertisement for use in cinemas (cintas cinematogáficas), or commercial that is transmitted and presented on radio and television must be Dominican nationals. For greater certainty, this requirement applies only to such advertisements that are produced in the Dominican Republic.

However, if a commercial for Dominican goods and services to be sold in the Dominican Republic needs to be produced abroad, 25 percent of the artists and production personnel in charge of production must be Dominican nationals.

Sector: Communications - News Agency Services

Obligations Concerned: Senior Management and Boards of Directors (Article 10.10)

Measures:

- Ley sobre Expresión y Difusión del Pensamiento, No. 6132, December 15, 1972, Art. 5

Description: Investment

The senior manager of every newspaper or periodical produced in the Dominican Republic must be a Dominican national.

Sector: Communications - Broadcasting

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5)

Measures:

- Ley General de Telecomunicaciones, No. 153-98, May 27, 1998, Chapters V, X and XI

Description: Cross-Border Services and Investment

In order to obtain a corresponding authorization to install and operate broadcast networks and to provide broadcast services in the Dominican Republic it is required to have a legal domicile in the Dominican Republic and be a stock company (compañía por acciones) or a non-profit organization incorporated under the laws of the Dominican Republic.

Only Dominican nationals may own and control an enterprise that provides public radio broadcasting services that originate in the Dominican Republic.

For greater certainty, this entry does not apply to content providers.

Sector: Communications

Obligations Concerned: Market Access (Article 11.4) Local Presence (Article 11.5)

Measures: - Ley General de Telecomunicaciones, No. 153-98, May 27, 1998, Chapter V

Description: Cross-Border Services

In order to obtain the corresponding authorization to install and operate telecommunications networks in the Dominican Republic, in order to provide telecommunications services to users in the Dominican Republic, it is required to have a legal domicile in the Dominican Republic and be a stock company (compajiia por acciones) incorporated under the laws of the Dominican Republic.

Sector: Distribution, Trade, and Commission Agent Services

Obligations Concerned: Market Access (Article 11.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9)

Measures:

- Ley de Promoción Agrícola y Ganadera, No. 532, December 12, 1969, Art. 41

- Reglamento sobre Preparación, Clasificación y Transporte del Café, No. 7107, September 18, 1961, Art. 15

- Ley que Establece que el Instituto de Estabilización de Precios será el Distribuidor Único del Azúcar de Producción Nacional para el Consumo Interno, No. 80, November 28, 1974, Art. 1

- Ley que Crea e Integra el Consejo de Administración Salinera, como Distribuidor Exclusivo de toda la Sal en Grano de Origen Marino Producido en el País, No. 286-98, July 29, 1998, Art. 1, y su Reglamento de Aplicación, No. 1294-00, December 13, 2001

Description: Cross-Border Services and Investment

Only enterprises organized as stock companies (compajfiias por acciones) under Dominican law may operate as deposit warehouses for the care and conservation of imported goods.

Coffee for export must be packed in locally manufactured sacks.

Only the Instituto de Estabilizacièon de Precios (INESPRE) may distribute domestically produced sugar in the Dominican Republic.

Only the Consejo de Administracièon Salinera may distribute marine unrefined salt produced in the Dominican Republic.

Sector: Tourism and Services Related to Travel

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Measures:

- Ley Organica de Turismo, No. 541, December 31, 1969, Arts. 18 and 23

- Reglamento para el Trasporte Terrestre Turistico de Pasajeros, No. 817-03, August 20, 2003, Art. 11

- Decreto que Autoriza el Establecimiento de Casinos, Juegos de Bingo y Tragamonedas, No. 6273, December 8, 1960, Art. 2

Description: Cross-Border Services

To operate in the Dominican Republic, foreign travel agencies and tour operators must be duly authorized in their country of origin and represented by a local agency.

Tour guide licenses may be granted to foreign nationals only in exceptional circumstances, such as when no Dominican tour guide can satisfy the needs of a particular tour group, including the need to speak a particular language.

All casino and game employees must be Dominican nationals.

Drivers for land transport of tourists must be Dominican nationals or foreign nationals resident in the Dominican Republic.

Sector: Recreational and Cultural Services

Obligations Concerned: National Treatment (Article 11.2)

Measures:

- Ley sobre Expresión y Difusión del Pensamiento, No. 6132, December 15, 1972, Art. 33

- Reglamento sobre la Operación de la Comisión Nacional de Espectáculos Públicos y Radiodifusión, No. 824, March 25,1971, Art. 122

Description: Cross-Border Services

Variety shows offered to audiences in theaters, nightclubs, and other entertainment venues that are performed by foreign artists must include the performance of one Dominican artist for each foreign artist.

Sector: Transportation - Maritime Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Senior Management and Boards of Directors (Article 10.10) Local Presence (Article 11.5)

Measures:

- Ley sobre Policia de Puertos y Costas, No. 3003, May 17, 1951 Art. 56 and its paragraph

- Ley sobre Protección y Desarrollo de la Marina Mercante, No. 180, May 30, 1975, Arts. 1 and 4

- Decreto que Establece el Reglamento Tarifario de la Autoridad Portuaria Dominicana, No. 572-99, December 30, 1999, Art. 3, para. I, subparas. a and b, note 2

Description: Cross-Border Services and Investment

Vessels used for towing, passenger or freight transportation, or loading or unloading in Dominican ports, as well as vessels used to navigate inland waterways in the Dominican Republic, must be Dominican flagged vessels.

Cabotage in the Dominican Republic is exclusively reserved for national flagged vessels. When a Dominican flag vessel cannot perform this service, a temporary permit may be granted to a national shipowner for a foreign flag vessel to offer this service.

All Dominican Republic flag ships of more than 50 tons, providing cabotage are exempt from the requirement to have a harbor pilot on board and to pay pilotage fees provided they do not transport cargo abroad.

When loading and unloading merchandise or passengers, Dominican Republic flag vessels pay 50 percent of the amount set for foreign-flag vessels. The fees for foreign flag vessels range from 1.00 U.S. dollars per foot of beam per day in port to 1.15 U.S. dollars per foot of beam per day in port.

Tariffs applied to foreign tourist yachts (3) will be 0.50 U.S. dollars per foot of beam per day or its equivalent in Dominican pesos (RD$). The fees for national tourist yachts range from RD$ 300.00 for 25 passengers to RD$ 800.00 for up to 99 passengers, and for 100 or more passengers, the fee increases by RD$ 10.00 for each passenger.

For purposes of this entry, national shipowner means a shipowner who is a Dominican national and resides in the Dominican Republic. Ifthe ship is co-owned or is community property, 70 percent of its value must belong to Dominicans residing in the Dominican Republic.

Enterprises organized under Dominican law, whose main purpose is the administration of Dominican flag vessels and maritime commercial passenger and/or freight transportation, must comply with the following requirements:

(a) 70 percent of the shares and participations, as well as 70 percent of the subscribed and paid-in capital, must belong to Dominican nationals that reside in the Dominican Republic or enterprises organized under Dominican law.

(b) 75 percent of the Board of Directors must be Dominican nationals residing in the Dominican Republic; and

(c) it must be organized as a stock company (compafia por acciones) under Dominican law and have its main headquarters and official domicile in the Dominican Republic.

(3) For greater certainty, this tariff does not apply to cruise vessels.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.9)

Measures:

- Ley sobre Aerondutica Civil, No. 505, November 10, 1969, Arts. 128, 130 and 140

- Decreto que Reglamenta u Regula los Operadores, Agentes y Consignatarios de Vuelos no Regulares, No.751-02, September 19, 2002, Arts. 1 and 2

Description: Investment

Air transportation of passengers, cargo or correspondence between destinations within the Dominican Republic (cabotage) is reserved for aircraft owned by Dominican persons.

For purposes of the preceding paragraph, enterprises shall be deemed to be Dominican enterprises when at least 51 percent of their capital is owned by Dominican nationals and at least 51 percent of their administrators are Dominican nationals as well.

All enterprises performing the functions of operator, agent, or non- regular (charter) flight consignee, must be organized under Dominican law, must be at least 51 percent owned by Dominican nationals, and must employ Dominican nationals in senior management.

Sector: Air Transportation - Specialty Air Services and Maintenance and Repair of Aircraft

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Measures: - Ley sobre Aeronáutica Civil, No. 505, November 10, 1969, Arts. 79, 82, and 128

Description: Cross-Border Services

Aerial advertising and publicity, agricultural works, fumigation, fishing prospects, air taxis, filming, photography, and surveyance shall be reserved for Dominican persons.

The Dirección General de Aeronáutica Civil may issue temporary permits to foreign pilots that come to the country to perform air transport services on a temporary basis, provided that it is demonstrated that there is no available Dominican personnel to provide the service.

Foreign nationals may engage in remunerated aeronautical activities only if they hold licenses or certificates either issued in the Dominican Republic, or issued in a foreign country in which Dominican nationals holding licenses or certificates issued in the Dominican Republic are able to engage in such remunerated aeronautical activities.

Sector: Free Zones

Obligations Concerned: Performance Requirements (Article 10.9)

Measures:

- Ley sobre Fomento de Zonas Francas, No. 8-90, January 15, 1990, Art. 17

Description: Investment

An enterprise established in the Free Zone of the Dominican Republic may not introduce more than 20 percent of its total sales in goods or services into the Dominican Republica's customs territory.

This non-comforming measure shall cease to exist no later than December 31, 2009 in accordance Article 3.4 (Waiver of Customs Duties), paragraph 3.

Sector: Oil Exploitation and Exploration Services

Obligations Concerned: National Treatment (Article 10.3)

Measures:

- Ley sobre la Exploración, Explotación y Beneficios por Particulares de los Yacimientos de Petróleo y sus Derivados, los Hidrocarburos y demás Combustibles Similares, No. 4532, August 30, 1956, Art. 4

Description: Investment

Sovereign foreign governments may not be granted the right to explore, exploit, or benefit from oil and other hydrocarbon substances, nor shall any natural person or enterprise enjoying these rights allow a sovereign foreign government as a partner, associate, or shareholder.

Sector: Fishing

Obligations Concerned: National Treatment (Article 10.3)

Measures:

- Ley de Pesca, No. 5914, May 22, 1962, Arts. 15 (para. 1), and 19 (paras. a and b)

- Proyecto de Ley que crea el Consejo Dominicano de Pesca y Acuicultura, Art. 41

Description: Investment

Only natural persons residing in the Dominican Republic or enterprises organized under Dominican law may obtain fishing permits or fishing licenses.

To engage in maritime or fluvial fishing and hunting, an enterprise must be organized under Dominican law and 50 percent of its capital must be owned by Dominican nationals.

In order to obtain fishing permits, foreign-flag vessels must be previously authorized by the Marina de Guerra and the DirecciÃ©n Nacional de Drogas.

Only Dominican nationals may engage in artisanal fishing within 54 nautical miles of the coast.

Sector: Educational Services

Obligations Concerned: Market Access (Article 11.4) Local Presence (Article 11.5)

Measures:

- Ley sobre Educacion Superior, Ciencia y Tecnologia, No. 139- 01, August 13, 2001, Art. 44

- Reglamento Orgdnico para las Instituciones Educativas, No. 66,97, May 28, 1999, Art. 19.2

Description: Cross-Border Services

To teach at any Education Center in the kindergarten, pre-school, elementary, intermediate, high school, technical, or university level, a foreign national must reside in the Dominican Republic.

The Secretaria de Estado de Educación Superior, Ciencia y Tecnologia (SEESCYT) may deny a request to create a new institution of higher learning or professional or technical institute if there is no economic need of such institution or institute.

For greater certainty, this entry does not apply to the supply of foreign language training, corporate, business, and industrial

training programs, skill development programs, or educational consulting services, including technical support and development of curriculums and programs. It also does not apply to foreign educational institutions that offer their programs through institutions already established in the Dominican Republic.

Sector: Cooperative Associations

Obligations Concerned: National Treatment (Article 10.3)

Measures:

- Ley sobre Asociaciones Cooperativas, No. 127-64, January 27, 1964, Arts. 1, 50, and 51

Description: Investment

Cooperatives are non-profit associations constituted by natural persons residing in the Dominican Republic or enterprises organized under the laws of the Dominican Republic.

They may accept foreign nationals residing in the Dominican

Republic as associates in a proportion not larger than 50 percent of the total membership and shares.

Sector: Lotteries

Obligations Concerned: Market Access (Article 11.4)

Measures:

- Ley que Establece una Renta Pública bajo la Denominación de Lotería Nacional, No. 5158, June 25, 1959, Arts. 1, 2, and 3

Description: Cross-Border Services

The Loteria Nacional is the state enterprise that operates and manages the lottery of the Dominican Republic. A private enterprise currently holds an exclusive concession to provide electronic lottery services in the Dominican Republic.

Under Dominican law, a lottery is any system used to distribute prizes in money through raffles among people buying tickets for that purpose.

Sector: Retail Distribution of Pharmaceutical Products

Obligations Concerned: Market Access (Article 11.4)

Measures:

- Ley General de Salud, No. 42-01, March 8, 2001, Art. 103

Description: Cross-Border Services Pharmaceutical establishments shall be at a distance of at least 500 meters from each other. For purposes of this entry, pharmaceutical establishment means a pharmacy, drug store, or industrial pharmaceutical laboratory.

Sector: Services Incidental to Mining, Hydro-Electric Plant Construction and Management; Electricity Transmission, Marketing and Distribution Services; Public Irrigation Services; Management and Operation of Water Distribution and Waste Management Services; Airport and Port Construction, Operation and Management Services; and Operation of Lotteries

Obligations Concerned: Market Access (Article 11.4)

Existing Measures:

- Ley Minera de la República Dominicana, No. 146, June 4, 1971, Art. 3

- Ley General de Electricidad, No. 125-01, July 26, 2001, Art. 41 - Ley sobre el Dominio de Aguas Terrestre y DistribuciÃ©n de Aguas Publicas, No. 5852, March 29, 1962, Arts. 17 and 18

- Ley que Crea el Instituto Nacional de Recursos Hidrdulicos (INDRHI), No. 6, September 8, 1964, Art. 4

- Ley que Estable una Renta Publica bajo la DenominacidÃ©n de Loteria Nacional, No. 5158, June 25, 1959, Arts. 1 and 3

Description: Cross-Border Services

In granting concessions to supply the following services:

- construction or temporary management of a hydro-electric power plant;

- construction or temporary management of an electric transmission project;

- distribution or marketing of electricity;

- irrigation services or construction, management, operation, or maintenance of water distribution or waste management services;

- construction, operation, or management of a port or airport;

- services incidental to mining; or

- operation of lotteries;

the Dominican Republic reserves the right to impose limitations on the number of service suppliers in the form of numerical quotas, monopolies, or exclusive service suppliers; or require supply of these services through a joint venture.

For greater certainty, any other conditions on the grant of such concession shall be otherwise consistent with the Agreement and services suppliers of the other Parties will be permitted to obtain such concessions.

Annex I. Schedule of El Salvador

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Constitución de la República de El Salvador, Arts. 95 and 109

Description: Investment

Rural land may not be owned by a foreign person, including a branch of a foreign person, if the person is a national of a country or is organized under the law of a country that does not permit Salvadoran persons to own rural land, except in the case of land to be used for industrial plants.

An enterprise organized under Salvadoran law, a majority of whose capital is owned by foreign persons, or a majority of whose partners are foreign persons, is subject to the preceding paragraph.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures:

Constitución de la República de El Salvador, Arts. 95 and 115

Ley de Inversiones, Legislative Decree No. 732, Art. 7

Código de Comercio, Art. 6

Description: Investment

Only the following persons may engage in small scale commerce, industry, and the supply of services in El Salvador:

(a) Salvadoran nationals born in El Salvador; and

(b) nationals of Central American Parties.

An enterprise organized under Salvadoran law, a majority of whose capital is owned by foreign persons, or a majority of whose partners are foreign persons, may not establish a small scale enterprise to engage in small scale commerce, industry, and the supply of services ("small scale enterprise"). For purposes of this entry, a small scale enterprise is an enterprise with a capitalization not greater than 200,000 U.S. dollars.

Sector: Cooperative Production Societies

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Reglamento de la Ley General de Asociaciones Cooperativas, Title VI, Chapter 1, Art. 84

Description: Investment

In cooperative production societies, at least 75 percent of the total number of partners must be Salvadoran persons.

For purposes of this non-conforming measure, a branch of an enterprise that is not organized under Salvadoran law is not a Salvadoran person.

For greater certainty, a cooperative production society exists to provide certain benefits to its members including with respect to distribution, sales, management, and technical assistance. Its functions are not only economic but also social.

Sector: Duty-Free Commercial Centers and Establishments

Obligations Concerned: National Treatment (Article 10.3)

Level of Government:

Measures: Constitución de la República de El Salvador, Art. 95

Ley para el Establecimiento de Tiendas Libres en los Puertos Marítimos de El Salvador, Art. 5

Description: Investment

Only Salvadoran nationals born in El Salvador and enterprises organized under Salvadoran law may apply for a permit to establish duty-free commercial centers or establishments in El Salvador's seaports.

However, an enterprise organized under Salvadoran law, a majority of whose capital is owned by foreign persons, or a majority of whose partners are foreign persons, may not establish duty free commercial centers or establishments in El Salvador's seaports.

Sector: Air Services - Specialty Air Services

Obligations Concerned: Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2)

Level of Government: Central

Measures: Ley Orgánica de Aviación Civil, Arts. 5, 89, and 92

Description: Cross-Border Services

The supply of specialty air services requires prior authorization from the Autoridad de AviaciÃ©n Civil. Authorization from the civil aviation authority is subject to reciprocity and must take into account national air transport policy.

Sector: Air Services - Aircraft Repair and Maintenance Services During which an Aircraft is Withdrawn from Service and Pilots of Specialty Air Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Level of Government: Central

Measures: Ley Orgánica de Aviación Civil, Arts. 39 and 40

Description: Cross-Border Services

El Salvador applies reciprocity requirements when determining whether to recognize or validate licenses, certificates, and permits issued by foreign air transport authorities to:

(a) technical staff supplying aircraft repair and maintenance services while an aircraft is withdrawn from service; and

(b) pilots and other technical staff supplying specialty air services.

Sector: Communications Services - Advertising and Promotional Services for Radio and Television

Obligations Concerned: Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2)

Level of Government: Central

Measures:

Decreto de las disposiciones para regular la explotacidn de obras de naturaleza intelectual por medios de comunicacidn publica y la participacion de artistas salvadorefios en espectdculos piblicos, Legislative Decree No. 239, June 9, 1983, published in Diario Oficial No. 111, Vol. 279, June 15, 1983, Art. 4

Decree No. 18, Sustitución de los articulos 1 y 4 del Decreto Legislativo No. 239, June 9, 1983, published in Diario Oficial No. 7, Vol. 282, January 10, 1984

Description: Cross-Border Services

At least 90 percent of the production and recording of any commercial advertisement for use in El Salvador's public communications media, meaning over-the-air television and radio broadcasts and printed material that originate in El Salvador, must be carried out by enterprises organized under Salvadoran law.

A commercial advertisement produced or recorded by an enterprise organized under the law of another Central American Party may be used in the Salvadoran media, as long as similar treatment is extended by that Party to commercial advertisements produced or recorded in El Salvador.

The broadcast in El Salvador's public media of a commercial advertisement for an international product, brand, or service that has been imported into El Salvador or produced in El Salvador under license and does not satisfy the requirements referenced above will be permitted and may be subject to a one-time-fee.

Sector: Communications Services - Television and Radio Broadcasting Services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Ley de Telecomunicaciones, Art. 123

Description: Investment

Concessions and licenses for free reception broadcasting services shall only be granted to Salvadoran nationals born in El Salvador or enterprises organized under Salvadoran law whose equity capital is at least 51 percent owned by Salvadoran persons.

Sector: Performing Arts

Obligations Concerned:

Level of Government: National Treatment (Article 11.2)

Measures: Central

Ley de Migración, Arts. 62-A and 62-B

Legislative Decree No. 382, May 29, 1970, published in Diario Oficial No. 64,Vol. 227, April 10, 1970

Executive Decree No. 16, May 12,1970, published in Diario Oficial No. 87, Vol. 227, May 18, 1970, Art. 1

Description: Cross-Border Services

No foreign artist may give paid performances of any kind without the prior express authorization of the Ministerio de Gobernación, which shall first seek, within 15 days, the advisory opinion of the legally established craft union of the artistic field in which the artist is involved. Foreign artists shall pay, to the relevant union, a performance fee deposit of 10 percent of the gross income likely to be earned in the country. Where it is not possible to make the advance payment, the artist shall pay an adequate amount as a "security deposit" to the relevant union.

No foreign artist or group of artists may perform in the country for more than 30 days consecutively or intermittently within a year from the date of the first performance.

An artist is any person acting in El Salvador, individually or in a company consisting of one or more persons, to give

performances in music, song, dance or readings, or to present shows, whether in person (i.e., live) or before a large or small audience or on radio or television.

Sector: Circuses

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures:

Ley de Migración, Att. 62-C

Decree No. 122, November 4,1988, published in Diario Oficial No. 219, Vol. 301, November 25, 1988, Art. 3

Legislative Decree No. 382, May 29, 1970, published in Diario Oficial No. 64, Vol. 227, April 10,1970

Decree No. 193, March 8, 1989, published in Diario Oficial No. 54, Vol. 302, March 17, 1989, Arts. 1 and 2

Reglamento para la Aplicación de los Decretos Legislativos 122 and 193 Relativos a Empresas Circenses, Arts. 1 and 2

Description: Cross-Border Services

Foreign circuses or other similar shows must pay to the relevant circus union a performance fee equal to 2.5 percent of the gross income likely to be earned daily from ticket sales. The fee must be paid in full through the withholding system.

All foreign circuses must be authorized by the appropriate Ministry and once authorized, notify the Asociacidn Salvadorefia de Empresarios Circenses (ASEC) and pay ASEC 3 percent of the gross income earned from ticket sales for each performance, as well as 10 percent of total earnings from sales to the audience, inside the circus, of flags, caps, tee shirts, balloons, photographs and other paraphernalia. The foreign circus shall pay an adequate amount as a security deposit to ASEC.

A foreign circus entering El Salvador may only work in the city of San Salvador for 15 days, which may be extended for a further 15 days.

A foreign circus that has performed in El Salvador can only return to the country after at least one year has elapsed since the date on which the circus left the country.

Sector: Performing Arts

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures:

Decreto de las disposiciones para regular la explotación de obras de naturaleza intelectual por medios de comunicación publica y la participación de artistas salvadoreños en espectáculos públicos, Legislative Decree No. 239, June 9, 1983, published in Diario Oficial No. 111, Vol. 279, June 15, 1983, Art. 3

Decree No. 18, Sustitución de los articulos 1 y 4 del Decreto Legislativo No. 239, June 9, 1983, published in Diario Oficial No. 7, Vol. 282, January 10, 1984

Description: Cross-Border Services In the case of public performances involving the live participation of artists of any kind, the participation of Salvadoran nationals shall be equivalent to 20 percent of the number of participating foreigners.

Sector: Construction and Related Engineering Services

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3) National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures:

Ley de Incentivos a las Empresas Nacionales de la Industria de la Construccion, Legislative Decree No. 504, published in Diario Oficial No. 167, Vol. 308, July 9, 1990, as amended by

Legislative Decree No. 733, published in Diario Oficial No. 80, Vol. 311, April 23, 1991

Description: Cross-Border Services and Investment

To participate in design activities, consulting, consulting and management of engineering or architectural projects, or any type of work or study relating to such projects' construction, whether before, during, or after construction, an enterprise a majority of whose capital is owned by foreign nationals ("foreign enterprise") must be contractually associated with an enterprise established in El Salvador ("Salvadoran enterprise") that is legally registered and qualified with the Ministerio de Obras Públicas, unless the foreign enterprise determines that such Salvadoran enterprise is not available.

The foreign enterprise must have a resident representative in El Salvador.

Further, an engineering or architectural project is subject to the following requirements:

(a) enterprises organized under Salvadoran law must have an investment in the project equal to at least 20 percent of the value of the project; and

(b) such enterprises must supply at least 30 percent of the technical staff and 90 percent of the administrative staff on the project.

The requirements of subparagraph (b) do not apply if the foreign enterprise determines that Salvadoran enterprises are not able to provide the necessary resources.

For greater certainty, technical staff and administrative staff do not include senior management. The requirements of subparagraphs

(a) and (b) do not apply:

(i) when the funds for the project come partially or entirely from foreign governments or international organizations; or

(ii) to specific projects or grants for specialized technical cooperation.

Sector: Public Accounting and Public Auditing

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3) National Treatment (Articles 10.3 and 11.2)

Level of Government: Central

Measures: Ley Reguladora del Ejercicio de la Contaduria, Arts. 2,3, and 4

Description: Cross-Border Services and Investment

Only a Salvadoran national may be authorized as a public accountant. Only a person authorized as a public accountant may be authorized as an external auditor.

For an enterprise to be authorized to supply public accounting services, the principal partners, shareholders, or associates must be Salvadoran nationals, and at least one person among the partners, shareholders, associates, or administrators must be authorized as a public accountant in El Salvador.

Sector: Professional Services: - Architectural Services - Engineering Services - Integrated Engineering Services - Urban Planning and Landscaping Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government:

Measures:

Central Ley de Urbanismo y Construccion, Arts. 4 and 8

Registro Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores, Executive Decree No. 34, published in Diario Oficial No. 4, Vol. 306, January 8, 1990

Reglamento Interno del Consejo Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores, Executive Decree No. 75, published in Diario Oficial No. 11, Vol. 310, January 17, 1991, Arts. 25, 26, and 27

Description: Cross-Border Services

Only architects and engineers who are inscribed in the Registro Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores ("Registro Nacional") may supervise architectural and engineering work on construction projects and sign and seal architectural or engineering plans for such projects.

An architect or engineer must be resident in El Salvador to be inscribed in the Registro Nacional.

Draftsmen, builders, and electrical installation technicians must be Salvadoran nationals in order to be inscribed in the Registro Nacional.

Sector: Professional Services: Health Services (Including but not limited to: General and Specialist Medical Services, Dental Services, Veterinary Services, Paramedical Services, Services rendered by Psychologists, Midwives, Nurses, Physiotherapists, Chemists and Qualified Clinical Laboratory Technicians, and Technical and Auxiliary Staff)

Obligations Concerned: Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Código de Salud, Arts. 4, 5, 17, 23, 30, 31, 32, and 306

Description: Cross-Border Services

A permit is necessary for the exercise of the health services professions and their specialized, technical, and auxiliary activities. Permits are issued by the appropriate Junta de Vigilancia. The Junta de Vigilancia may grant permanent, temporary, or provisional permits. A permanent permit is available only for private professional activity. Other permits are subject to restrictions and limitations in accordance with the law for specified reasons.

To grant a permanent permit the Junta de Vigilancia shall require that persons be Salvadoran nationals by birth or authorized to permanently reside in the country.

In addition to fulfilling the requirements under the law, foreigners must provide proof that the jurisdiction in which they earned their qualification allows Salvadoran nationals or graduates to practice their profession in analogous circumstances.

Sector: Professional Services - Legal Services (Notary Public)

Obligations Concerned: Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley de Notariado, Art. 4

Description: Cross-Border Services

Only persons authorized by the Supreme Court of Justice may exercise the profession of notary public. Only Salvadoran nationals who are attorneys may obtain such authorization. Central American nationals who have been authorized to practice law in El Salvador and who have resided in the country for at least

two years may also obtain such authorization, provided that:

(a) they have not been barred from practicing the profession of notary public in their own country; and

(b) Salvadoran nationals may practice the same profession in their country without any additional requirements than those laid down in Salvadoran law.

Sector: Professional Services - Teachers

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Constitución de la República, Art. 60

Description: Cross-Border Services

Only Salvadoran nationals may teach national history and the Constitution.

Sector: Professional Services: Customs Agents

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3) National Treatment (Articles 10.3 and 11.2)

Level of Government: Central

Measures: Reglamento del Código Aduanero Uniforme Centroamericano, Art. 18

Description: Cross-Border Services and Investment

Only nationals of the Central American Parties may work as customs agents.

Sector: Transport Services - Road Transport Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)

Measures:

Constitución de la República de El Salvador, Art. 95

Ley de Transporte Terrestre, Tránsito y Seguridad Vial, Arts. 38-A and 38-B

Reglamento General de Transporte Terrestre, Arts. 1 and 2

Level of Government: Central

Description: Cross-Border Services and Investment

Permits for the supply of services in passenger transport, regular and non-regular, within El Salvador may only be granted to Salvadoran nationals or their partners.

Only vehicles with Salvadoran license plates may transport goods from points in El Salvador to other points in El Salvador.

At least 51 percent of the equity capital of an enterprise engaged in such goods transport in El Salvador must be owned by Salvadoran persons. If such capital is owned by an enterprise, at least 51 percent of the stock of that enterprise must be owned by Salvadoran nationals.

Sector: Energy

Obligations Concerned: Market Access (Article 11.4)

Measures: Ley reguladora del deposito, transporte y distribución de productos de petróleo, Art. 8

Description: Cross-Border Services

The construction of a gas service station will not be authorized if it is not a prudent distance from another gas station, in order to avoid excessive concentration. A prudent distance is considered one of not less than 600 meters in an urban area and 10 kilometers in a rural area. The 10 kilometer requirement also applies to one-way roads. For two-way roads containing medians, the distance will be measured on each side of the road independently.

Sector: Land Transport

Obligations Concerned: Market Access (Article 11.4)

Measures: Reglamento General de Transporte Terrestre, Title II, Art. 11 and Title V, Arts. 29 and 30

Description: Cross-Border Services

Public passenger land transportation concessions for a specific route will be limited, subject to technical studies of existing demand. A free public passenger land transportation concession is limited to one vehicle.

Annex I. Schedule of Guatemala

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Decree No. 118-96 that amends Decree Nos. 38-71 and 48-72, Arts. 1 and 2

Description: Investment

Only the following persons may be granted title to, rent, or use state-owned lands in the Department of El Petón:

(1) Guatemalans by birth who do not own rural real estate anywhere in the country that exceeds 45 hectares; and

(2) Guatemalans by birth who do not own industrial, mining or commercial enterprises.

Enterprises owned 100 percent by Guatemalans by birth that meet the requirements set out in the preceding paragraph may be granted title to, rent, or use state-owned lands in the Department of El Petón.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Ley de Titulación Supletoria, Decree 49-79, Art. 2

Description: Investment

Only Guatemalans by birth and enterprises that are majority owned by Guatemalans by birth may take adverse possession of real estate.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Constitución Política de la República de Guatemala, Art. 122

Ley Reguladora de las Areas de Reservas Territoriales del Estado de Guatemala, Decree No. 126-97, Art. 5

Description: Investment

Foreign nationals require an authorization from the Oficina de Control de Areas de Reserva del Estado to acquire ownership of the following state-owned land:

(a) real estate located in urban zones; and

(b) real estate for which rights were registered in the General Property Registry before March 1, 1956 in the following locations:

(i) a 3-kilometer-long strip of land along the ocean;

(ii) 200 meters around the lakeshores;

(iii) 100 meters on either side of the navigable rivers; and

(iv) 50 meters around any spring that serves as a source of water for the population.

Only the Government may rent state-owned land described above to enterprises organized under Guatemalan law.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Constitución Política de la República de Guatemala, Art. 123

Description: Investment

Only Guatemalans by birth and enterprises 100 percent owned by Guatemalans by birth may own or possess real property located within 15 kilometers of the borders.

Foreign nationals may, however, own or possess urban real estate and real estate for which rights were registered in the General Property Registry before March 1, 1956 within the 15 kilometer area.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Código de Comercio, Decree No. 2-70, and its amendments contained in Decree No. 62-95, Art. 2

Description: Investment

For an enterprise organized under foreign law to be established in Guatemala, in any form, it must allocate an assigned amount of capital for its operations in Guatemala, and execute a guarantee in favor of third parties in an amount not less than the equivalent in quetzales of US$ 50,000, which must remain in effect for the duration of the enterprise's operations in Guatemala.

The exact amount of the guarantee shall be determined by the Registro Mercantil, based on, among other factors, the amount of the investment.

For greater certainty, the requirement of a bond is not to be construed to prevent an enterprise organized under the laws of a foreign country from establishing in Guatemala.

Sector: Forestry

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Constitución Politica de la Republica de Guatemala, Art. 126

Description: Investment

Only Guatemalans by birth or enterprises organized under Guatemalan law may exploit and renew forestry resources.

Sector: Professional Services - Notaries

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Código de Notariado, Decree No. 314, Art. 2

Description: Cross-Border Services

To practice as a notary public, an individual must be a Guatemalan by birth domiciled in Guatemala.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Código de Comercio, Decree No. 2-70, Art. 213

Description: Investment

An enterprise organized under the laws of a foreign country that supplies a professional service that requires a legally recognized university degree, certificate, or diploma may not be established in Guatemala. However, such an enterprise may supply its services in Guatemala through a contract or other relationship with an enterprise established in Guatemala.

Sector: Performing Arts

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley de Espectáculos Públicos, Decree No. 574, Arts. 36, 37, and 49

Acuerdo Ministerial No. 592-99 del Ministerio de Cultura y Deportes, Art. 1

Description: Cross-Border Services

Prior authorization from the Dirección de Espectdculos is required to contract with foreign groups, enterprises, or artists.

In order for foreign artists or artist groups to perform in Guatemala, they must have a consent letter from any of the legally recognized non-governmental artist unions in the country.

In mixed performances, made up of one or more films and variety shows, preference will be given to Guatemalans if the circumstances of the cast, schedule, and contract so allow.

Sector: Tour Guides

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Acuerdo No. 219-87 del Instituto Guatemalteco de Turismo - INGUAT- Funcionamiento de Guias de Turismo, Art. 6

Description: Cross-Border Services

Only Guatemalans by birth or nationals of a foreign country that are residents in Guatemala may provide tour guide services in Guatemala.

Sector: Specialty Air Services

Obligations Concerned: Most-Favored-Nation Treatment (Article 11.3)

Level of Government: Central

Measures: Ley de Aviación Civil, Decreto del Congreso 93-2000, Art. 24

Description: Cross-Border Services

In order to perform aeronautical duties on board foreign aircraft, individuals are required to have a certificate, license, or the equivalent, accepted by the Dirección General de Aeronáutica Civil, or issued pursuant to an international agreement to which Guatemala is a party, under conditions of reciprocity.

Sector: Specialty Air Services

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Ley de Aviación Civil, Decreto del Congreso 93-2000, Art. 62

Description: Cross-Border Services

In the operation of specialty air services by Guatemalan operators, all personnel performing aeronautical duties on board the aircraft must be Guatemalans by birth. However, the Dirección General de Aeronáutica Civil may authorize foreign nationals to perform such duties for a period not to exceed three months, counting from the date of authorization.

The Dirección General de Aeronáutica Civil may extend this period if it determines that there are no such trained personnel in Guatemala.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Ley de Aviación Civil, Decree No. 93-2000, Art. 71

Description: Investment

Only Guatemalans by birth or enterprises organized under Guatemalan law may operate commercial air transportation

services in Guatemala.

For greater certainty, commercial air transportation services includes all domestic air transport, including of passengers, mail or cargo.

In order to supply such services, an enterprise must also meet the following requirements:

(a) the enterprise must have its principal place of business in Guatemala; and

(b) at least one-half, plus 1, of the directors, managers and individuals who have responsibility for management and control of the enterprise must be Guatemalans by birth or be a permanent resident of Guatemala.

Annex I. Schedule of Honduras

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures:

Decree No. 131, Constitución de la República, Title II, Chapter II, Art. 107

Decree No. 90-1990, Ley para la Adquisición de Bienes Urbanos en las Areas que delimita el Articulo 107 de la Constitución de la República, Arts. 1 and 4

Decree No. 968, Ley para la Declaratoria, Planeamiento y Desarrollo de las Zonas de Turismo, Title V, Chapter V, Art. 16

Description: Investment

State land, common land, and private land within 40 kilometers of the borders and coastlines, and such land on islands, keys, coral reefs, breakwaters, rocks, and sand shoals in Honduras, can only be acquired, possessed, or held under any title by Honduran nationals by birth, by enterprises fully owned by Honduran nationals, and by state institutions.

Notwithstanding the preceding paragraph, any person may acquire, possess, hold, or lease for up to 40 years (which may be renewed) urban lands in such areas provided that it is certified and approved for tourist purposes, economic or social development, or for the public interest by the Secretaria de Estado en el Despacho de Turismo.

Any person that acquires, possesses, or holds such urban land may transfer that land only after prior authorization by the Secretaria de Estado en el Despacho de Turismo.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Decree No. 131, Constitucidn de la Republica de Honduras,Title VI, Chapter I, Art. 337

Agreement No. 345-92, Reglamento de la Ley de Inversiones, Chapters I and VI, Arts. 3 and 49

Description: Investment

Small-scale industry and trade are reserved to Honduran persons. Foreign investors cannot engage in small-scale industry or trade unless they are naturalized citizens and their country of origin grants reciprocity.

"Small-scale industry and trade" means an enterprise with capital, excluding land, buildings, and vehicles, of less than 150,000 Lempiras.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Decree No. 65-87, May 20, 1987, Ley de Cooperativas de Honduras, Title II, Chapter I, Arts. 18 and 19

Agreement No. 191-88, May 30, 1988, Reglamento de la Ley de Cooperativas de Honduras, Att. 34(c) and (d)

Description: Investment

Non-Honduran cooperatives may establish in Honduras if they receive authorization from the Instituto Hondurefio de Cooperativas. Authorization will be granted if:

(a) reciprocity exists in the country of origin; and

(b) the non-Honduran cooperative has at least one permanent legal representative in Honduras.

Sector: Customs Agents and Customs Agencies

Obligations Concerned: National Treatment (Article 10.3 and 11.2)

Level of Government: Central

Measures: Decree No. 212-87, Ley de Aduanas, Title IX, Chapter I, First and Third Sections, Arts. 177 and 182

Description: Cross-Border Services and Investment

Licensed customs agents must be Honduran nationals by birth.

Employees of the customs agent, who act on behalf of the customs agent, also must be Honduran nationals by birth.

Sector: Agricultural

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Agreement No. 2124-92, Reglamento de Adjudicación de Tierras en la Reforma Agraria, Arts. 1 and 2

Description: Investment

Agrarian reform beneficiaries must be Honduran nationals by birth, individually or organized in peasant cooperatives or other peasant enterprises.

Sector: Communications Services - Mail

Obligations Concerned: Market Access (11.4)

Level of Government: Central

Measures: Decree No. 120-93, Ley Organica de le Empresa de Correos de Honduras, Arts. 3 and 4

Description: Cross-Border Services

The operation of the mail system in Honduras is reserved exclusively to the Empresa Hondureña de Correos (HONDUCOR). (1)

(1) However, this exclusivity does not apply to the supply of express delivery services.

Sector: Radio, Television, and Newspaper Services

Obligations Concerned: Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Decree No. 131, Constitución de la Republica de Honduras, Chapter I, Art. 73, third paragraph

Decree No. 6, Ley de Emisión del Pensamiento, Chapter IV, Art. 30

Decree No. 759, Ley del Colegio de Periodistas de Honduras, Art. 8, amended by Decree No. 79, January 1, 1981

Description: Investment

Only Honduran nationals by birth may exercise senior management of newspapers or free over the air broadcast (radio and

television) news media, including its intellectual, political, and administrative orientation. (2)

(2) This does not apply to newspapers or news media that are established outside Honduras.

Sector: Telecommunications

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Decree No. 185-95, Ley Marco del Sector Telecomunicaciones, Chapter I, Art. 26

Agreement No. 141-2002, Reglamento General de la Ley Marco del Sector de Telecomunicaciones, December 26, 2002, Title II, Chapter I, Art. 93

Description: Cross-Border Services

Foreign governments may not directly participate in the provision of public telecommunications services.

Sector: Telecommunications

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 244-98, October 2, 1998, Art.1

Description: Cross-Border Services

The Empresa Hondureña de Telecomunicaciones (HONDUTEL) has the exclusive right to provide national and international telecommunications services throughout the territory of Honduras, such as: carrier, telex, telephone and telegraph services, including telegraph services in places where there is no other means of communication with the rest of the country. HONDUTEL shall benefit from the exclusive right to provide such services until December 24, 2005.

Timetable for reduction: Starting on December 25, 2005, HONDUTEL shall no longer have the exclusive right to provide national and international telecommunications services throughout the territory of Honduras, such as: carrier, telex, telephone and telegraph services, including telegraph services in places where there is no other means of communication with the rest of the country.

Sector: Construction or Consulting Services and Related Engineering Services - Civil Engineering

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Article11.3) Market Access (Article 11.4) Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 47-1987, Ley Orgánica del Colegio de Ingenieros Civiles de Honduras, Art. 67

Reglamento de Ley Orgánica del Colegio de Ingenieros Civiles de Honduras, Arts. 100 (A) - (D) and 101

Decree No. 753, Ley Orgánica del Colegio de Arquitectos de Honduras, Art. 37(b), (c), (d), (g), and (h)

Reglamento de Ley Organica del Colegio de Arquitectos de Honduras, Arts. 4(h), 7(a), (c), (d) and (h), 13, 68, and 69

Decree No. 902, Ley Orgánica del Colegio de Ingenieros Mecánicos, Electricistas y Químicos de Honduras, Att. 40 (c), (d), and (h)

Description: Cross-Border Services and Investment

Consulting and construction enterprises must be organized under Honduran law in order to be members of the Colegio de Ingenieros Civiles de Honduras (CICH) and to perform civil engineering projects in Honduras. For greater certainty, consulting and construction enterprises organized under foreign law may register provisionally with the CICH to perform specific civil engineering projects. Higher membership fees apply to foreign-owned enterprises. In addition, foreign workers must be authorized by the CICH in order to work on such projects.

Sector: Distribution Services - Petroleum Products (Liquid Fuel, Automotive Oil, Diesel, Kerosene, and LPG)

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 11. 5)

Level of Government: Central

Measures: Decree No. 549, Ley de Representantes, Distribuidores y Agentes de Empresas Nacionales y Extranjeras, Chapter I and VI, Arts. 4 and 25

Decree No. 804, amending Art. 4 of the Ley de Representantes, Distribuidores y Agentes de Empresas Nacionales y Extranjera

Description: Cross-Border Services and Investment

Only Honduran nationals and enterprises organized under Honduran law may be authorized to sell petroleum products. Enterprises must be at least 51 percent owned by Honduran nationals.

Sector: Electricity

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 158-94, Ley Marco del Sub Sector Eléctrico, November 26, 1994, Chapter V, Art. 15

Description: Cross-Border Services

Only the Honduran Government, through the Empresa Nacional de Energia Eléctrica, may transmit electricity or operate the electricity transmission system and dispatch center.

Sector: Lotteries

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Ley Orgánica de la Lotería Nacional, Decree No. 438, April 23, 1977, Art. 5(c)

Description: Cross-Border Services

The Patronato Nacional de la Infancia (PANT) exclusively administers the national lottery.

Sector: Education Services - Private Preschool, Primary, and Secondary Educational Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Decree No. 131, Constitución de la Republica, Title III, Chapter VII, Arts. 34, 166, and 168

Decree No. 79, Ley Orgánica de Educación, Arts. 64 and 65 Decree No. 136-97, Ley del Estatuto del Docente, Arts. 7 and 8

Executive Agreement No. 0760-5E-99, Reglamento General del Estatuto del Docente, Art. 6

Description: Cross-Border Services and Investment

A school director or supervisor must be a Honduran national by birth.

Teachers at all levels of the education system must be Honduran nationals by birth. Foreign nationals may, however, teach particular subjects at the middle and high school levels if there are no such Honduran nationals available to teach such subjects. Notwithstanding the preceding sentence, foreign nationals may teach the Constitution, civic education, geography, and the history of Honduras only if there is reciprocity for Honduran nationals in their country of origin.

Private schools at all levels must be organized under Honduran law.

For greater certainty, there are no restrictions on foreign ownership of such schools.

Sector: Entertainment Services - Music Entertainers

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)

Level of Government: Central

Measures: Decree No. 123, October 23, 1968, Ley de Proteccion a los Artistas Musicales, Arts. 1-4

Description: Cross-Border Services and Investment

Notwithstanding the measure listed above, Honduras agrees that foreign music artists who wish to perform individually or as a group in Honduras must pay five percent of the contracted fee to the Artist Union of Honduras and the manager or leaser shall, if possible, contract local artists to perform during the same performance.

For greater certainty, foreign music artists must register with the Artist Union of Honduras for each performance in Honduras.

Sector: Championships and Soccer Games Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Reglamento de Campeonatos y Competencias Liga Nacional de Fútbol No Aficionado de Primera División, Arts. 9 and 10

Description: Cross-Border Services

Foreign nationals that are players in the Honduran national soccer league must be temporarily resident in Honduras. Each team in such league may register a maximum of four foreign players, one of whom must be a national from a Central American country.

Sector: Amusement, Cultural, and Sports Services - Casinos and Gambling (Encompasses Roulette, Cards, Punter, Baccarat, Slot Machines, and the Like)

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 488, February 16, 1977, Ley de Casinos de Juegos de Envite o Azar, Art. 3

Description: Cross-Border Services and Investment

Only Hondurans nationals by birth and enterprises organized under Honduran law may operate a casino.

Sector: Environmental Services

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 134-90, Ley de Municipalidades, Art. 13(3) and (4) Decree No. 104-93, Ley General del Ambiente, Arts. 29 and 67

Description: Cross-Border Services

Only the State, through its municipalities, may provide public water distribution, waste disposal, and sanitation and hygiene services. For greater certainty, municipalities are responsible for the construction of aqueducts, the maintenance and administration of potable water, sanitary sewerage, and drainage, and the promotion and development of related projects.

Sector: Distribution, Wholesale and Retail - Weapons, Munitions, and Other Related Items

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 131, Constitución de la República, Title V, Chapter X, Art, 292

Decree No. 80-92, Ley de Inversiones, Chapter VI, Art.16

Description: Cross-Border Services

The wholesale and retail distribution of the following items are reserved solely for the Fuerzas Armadas de Honduras:

- munitions;

- warplanes,

- military rifles,

- all classes of pistols and revolvers, 41 caliber or higher; â Honduran Army standard-issue pistols;

- silencers for all classes of firearms;

- firearms;

- accessories and munitions;

- cartridges for firearms;

- apparatus and other accessories required to load cartridges;

- gunpowder, explosives, caps, and fuses;

- gas masks; and

- air rifles.

For greater certainty, use of explosives for commercial purposes may be permitted by the appropriate Honduran authority.

Sector: Investigation and Security Services

Obligations Concerned: National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Decree No. 156-98, Ley Orgánica de la Policía Nacional, Art.91

Description: Investment

In order to be established in Honduras, foreign private security enterprises must partner with Honduran enterprises working in the same field and appoint a Honduran national by birth as a senior manager.

Sector: Fisheries

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Decree No. 154, Ley de Pesca, Chapter IV, Arts. 20, 26, and 29

Description : Investment

Only Honduran nationals resident in Honduras and enterprises organized under Honduran law at least 51 percent owned by Honduran nationals can engage in commercial fishing in the territorial waters, rivers, and lakes in Honduras. For greater certainty, only Honduran flag vessels can perform commercial fishing activities in territorial waters in Honduras.

For greater certainty, only Honduran nationals by birth can be captains of commercial fishing vessels.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 131, Constitución de la República de Honduras, Chapter VIII, Art. 177

Reglamento para el Reconocimiento de Estudios Universitarios e Incorporacion de Profesionales, Arts. 2, 11, and 18

Description: Cross-Border Services

Notwithstanding existing measures relating to requirements for the practice of professions, including the measures listed above, Honduras agrees that authorization for professional practice will be granted based on principles of reciprocity.

Honduras agrees that if a jurisdiction in the United States recognizes professional degrees awarded by Honduran educational institutions, then Honduras will recognize equivalent professional degrees awarded by U.S. educational institutions.

Likewise, Honduras agrees that if a jurisdiction in the United States allows Honduran nationals to apply for and receive a license or certificate for the provision of a professional service, then Honduras will allow U.S. nationals to apply for and receive an equivalent license or certificate.

For greater certainty, the preceding paragraphs do not grant the automatic recognition of professional degrees or right to practice a profession, nor do they eliminate the nationality requirement for certain professions reserved exclusively for Honduran nationals, as provided for in Annexes I or II.

In addition, the relevant professional association in Honduras will recognize a license granted by a jurisdiction in the United States, and allow the holder of that license to register with the association and practice the profession in Honduras on a temporary basis based on the license issued in a jurisdiction in the United States, in the following cases:

(a) no educational institution in Honduras offers a course of study that would allow the practice of the profession in Honduras;

(b) the holder of the license is a recognized expert in the profession; or

(c) allowing the professional to practice in Honduras will, through training, demonstration, or other such opportunity, further the development of the profession in Honduras.

Sector: Air Transportation

Obligations Concerned:National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Decree No. 146, Ley de Aeronáutica Civil, Chapter X, Second, Third, and Fourth Sections, Art.80

Description: Investment

Only Honduran nationals and enterprises organized under Honduran law may supply domestic and international commercial public air transportation services by means of a Honduran flag aircraft.

Such enterprises must be controlled and at least 51 percent owned by Honduran nationals.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 146, Ley de Aeronáutica Civil, Chapter X, Second, Third, and Fourth Sections, Arts. 37, 125, and 126

Description: Cross-Border Services

Private specialty air transportation services for remuneration can only be provided by Honduran nationals or enterprises organized under Honduran law and must be authorized by the Secretaria de Obras Piblicas, Transporte y Vivienda.

When Honduran personnel are not available to perform such activities, foreign pilots or other technical personnel may be allowed to exercise such activities, with preference given to qualified personnel from any Central American country.

Sector: Maritime Transportation - Coastal Navigation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 167-94, January 2, 1995, Ley Orgánica de la Marina Mercante Nacional, Title I, II, Chapter VII, Art. 40

Agreement No. 000764, December 13, 1997, Reglamento de Transporte Marítimo, Att. 6

Description: Cross-Border Services and Investment

Coastal navigation for commercial purposes is reserved for Honduran merchant vessels. If there are no Honduran merchant vessels, or if they are not available, and for the time period that such circumstances exist, the DirecciÃ©n General de la Marina Mercante may authorize foreign merchant vessels to provide coastal navigation in Honduras. In such circumstances, preference shall be given to Central American flag vessels.

Honduran merchant vessels must be organized under Honduran law, at least 51 percent of its subscribed and paid-in share capital must be owned by Honduran nationals, and the company must be domiciled in Honduras.

Sector: Land Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4) Local Presence (Article 11.5)

Level of Government: Central

Description: Decree No. 319-1976, Ley de Transporte Terrestre, Arts. 3, 5, 17, 18, 27, and 28

Agreement No. 200, Reglamento de la Ley de Transporte Terrestre, Arts. 1, 7, 32, 33, and 34

Measures: Cross-Border Services and Investment

Public domestic land passenger and cargo transportation services may be supplied only by Honduran nationals and enterprises that are organized under Honduran law and at least 51 percent owned by Honduran nationals. It is necessary to obtain a certificate of operation from the Dirección General de Transporte de la Secretaria de Obras Públicas, Transporte y Vivienda (SOPTRAVN, which is subject to an economic needs test.

Public international land passenger and cargo transportation services may be supplied by foreign nationals and enterprises organized under foreign law based on reciprocity, but authorization for particular routes will be granted on a preferential basis to Honduran nationals and to enterprises organized under Honduran law.

Sector: Transportation - Railways

Obligations Concerned: National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Decree No. 48, Ley Constitutiva del Ferrocarril Nacional de Honduras, Chapters I and VIII, Arts. 32 and 12 (amended by Decree No. 54)

Description: Investment

The Ferrocarril Nacional de Honduras may only sell its subsidiaries to Honduran nationals and enterprises organized under Honduran law.

The senior manager of the Ferrocarril Nacional de Honduras must be a Honduran national by birth.

Sector: Other Business Services - Warehousing

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Agreement No. 1055, Reglamento de los Almacenes Generales de Depósitos, Art. 3

Description: Cross-Border Services

Only enterprises organized under Honduran law with fixed capital and the sole purpose of providing warehousing services shall be authorized to provide such services.

Sector: Business Consulting Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 900, Ley Orgánica del Colegio de Administradores de Empresas de Honduras, Arts. 61-E and 61-F

Reglamento de Ley Orgánica del Colegio de Administradores de Empresas de Honduras, Arts. 96, 111, 113, and 114

Description: Cross-Border Services

Foreign nationals may enter into contracts to provide business administration consulting services after confirmation of the contract by the Colegio de Administradores de Empresas de Honduras.

Enterprises organized under foreign law may enter into contracts to provide business administration consulting services after confirmation of the contract by the Colegio de Administradores de Empresas de Honduras if such services are not otherwise available in Honduras or because of contractual needs. In order to provide such services, such enterprises must form a partnership with Honduran firms that are duly registered with the Colegio de Administradores de Empresas de Honduras.

Foreign nationals and enterprises organized under foreign law must pay registration fees that are higher than those imposed on Honduran nationals and enterprises organized under Honduran law.

Sector: Economic Consulting Services

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 1002, Ley Orgánica del Colegio Hondureño de Economistas, Art. 58

Description: Cross-Border Services

In order to provide economic consulting services into the territory of Honduras, economic consulting enterprises organized under foreign law must be represented by a member of the Colegio Hondureño de Economistas.

Sector: Agricultural Engineering and Agronomy

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Level of Government: Central

Description: Decree No. 148-95, Ley Orgánica del Colegio de Profesionales en Ciencias Agrícolas de Honduras, Att. 5

Reglamento de la Ley Orgánica del Colegio de Profesionales en Ciencias Agricolas de Honduras, Art. 9 and Tabla de Pagos al COLPROCAH

Measures: Cross-Border Services

Foreign agricultural engineers and agronomists may be subject to higher professional association registration fees than those imposed on Honduran agricultural engineers and agronomists.

Sector: Forestry Engineers

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley Orgánica del Colegio de Ingenieros Forestales de Honduras, Art. 66

Description: Cross-Border Services

Forestry engineering consulting enterprises organized under foreign law must hire Honduran nationals that are members of the Association of Forestry Engineers of Honduras in a proportion meaningful to the size of the project.

Sector: Veterinarians

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley Orgánica del Colegio de Veterinarios de Honduras, Art. 12

Reglamento de la Ley Orgánica del Colegio de Médicos Veterinarios de Honduras, Art. 5

Description: Cross-Border Services

Foreign enterprises wishing to supply veterinary services in Honduras must be organized under Honduran law. Foreign veterinarians may be subject to higher professional association fees than those imposed on Central American veterinarians.

Sector: Microbiologists and Clinicians

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Reglamento de Inscripción del Colegio de Microbiólogos y Químicos Clínicos, Arts. 5, 6, and 8

Description: Cross-Border Services

Foreign microbiologists and clinicians must pay a higher registration fee than those paid by Honduran microbiologists and clinicians.

Sector: Notaries

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Decree No. 277-2002, August 16, 2002, Ley del Notariado, Art. 4

Description: Cross-Border Services

Notaries must be Honduran nationals.

Sector: Electrical Energy Services

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 158-94, Ley Marco del Sub-sector Eléctrico, Art. 23

Description: Cross-Border Services

In order to be established in Honduras and supply electrical energy distribution services, an enterprise must be organized as a commercial corporation with nominative stock.

Sector: Telecommunications

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decree No. 80-2003, Art. 1(3.5)

Executive Decree No. PCM-018-2003, October 2, 2003, Art. 1, No. TV (a)

Decree No. 109-2003, October 24, 2003, Art. 1, No. IV (a)

Description: Cross-Border Services

The Comisión Nacional de Telecomunicaciones (CONATEL) will not authorize additional mobile telephony operators until December 2005. CONATEL will authorize at least one additional operator after that date.

Sector: Public Accountants

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Decree No. 19-93, Ley Orgánica del Colegio de Profesionales Universitarios en Contaduríaa Publica, Art. 23

Description: Cross-Border Services

Any person wishing to supply public accountancy services in the territory of Honduras must be organized under Honduran law.

Sector: Architects

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Reglamento Interno Colegio de Arquitectos de Honduras, Art. 7(c) and (d)

Description: Cross-Border Services

Enterprises organized under foreign law must designate a member of the Colegio de Arquitectos de Honduras (CAH) as their representative prior to registering with the CAH to supply architectural services in Honduras. For greater certainty, enterprises organized under foreign law may only register for specific projects.

Annex I. Schedule of Nicaragua

Sector: Musicians and Artists

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Measures: Ley de Promoción a las Expresiones Artísticas Nacionales y de Protección a los Artistas Nicaragüenses, Law No. 215, published in La Gaceta No. 134, July 17, 1996, Arts. 14, 23, 24, 25, and 31

Description: Cross-Border Services

Foreign artists or musical bands may perform in Nicaragua solely by means of a prior contract.

Foreign artists performing shows or reviews of a commercial nature shall include in their program a Nicaraguan artist or group that performs similar shows.

Foreign artists or artistic groups not wishing to include a national artist in their program must pay one percent of the show's net receipts to the Instituto Nicaragiiense de Cultura unless the foreign artists' or groups' country of origin does not levy such tax on Nicaraguan artists or artistic groups.

Foreigners selected for the design and construction of public, pictorial, or sculptural monuments erected in Nicaragua, shall do so in association with Nicaraguan artists.

Sector: Tourism - Hotels, Restaurants, Tour Guides, Car Rental, and Other Tourism Related Activities.

Obligations Concerned: National Treatment (Article1 1.2) Local Presence (Article 11.5)

Measures: Ley de Incentivos a la Industria Turística de la República de Nicaragua, Law No. 306, published in La Gaceta No. 117, June 21, 1999, Arts. 16.1 and 16.2

Reglamento de Empresas y Actividades Turísticas de Nicaragua, published in La Gaceta No. 99, May 28, 2001, Arts. 16 and 17

Reglamento de los Operadores de Viajes de Nicaragua, published in La Gaceta No. 100, May 29, 2001, Art. 8

Reglamento que Regula las Actividades de las Empresas Arrendadoras de Vehículos Automotrices y Acuáticos (Rent a Car), published in La Gaceta No. 108, June 8, 2001, Art. 9

Reglamento de Guías de Turistas, published in La Gaceta No. 40, February 26, 2001, Art. 9

Reglamento de Agencias de Viajes de Nicaragua, published in La Gaceta No. 96, May 21, 2001, Art. 5

Description: Cross-Border Services

In order to supply tourism services in Nicaragua an enterprise must be organized under Nicaraguan law; and a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

This paragraph does not apply to the supply of tourism services during a cruise.

Tour Guides must be Nicaraguan nationals.

Sector: Services Related to Construction

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Measures: Ley Reguladora de la Actividad de Diseño y Construcción, Decree No. 237, December 1, 1986, Arts. 2, 4, and 6

Description: Cross-Border Services

In order to supply construction services in Nicaragua an enterprise must be organized under Nicaraguan law; and a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

Sector: Distribution of Fireworks, Firearms, and Munitions

Affected Obligation: National Treatment (Article 11.2) Local Presence (Article 11.5)

Measures: Reglamento de la Ley de la Policía Nacional, Decree No. 26-96, published in La Gaceta No. 32, February 14, 1996, Arts. 76 and 77

Description: Cross-Border Services

In order to engage in the distribution of fireworks, firearms, and munitions in Nicaragua an enterprise must be organized under Nicaraguan law; and a foreign national must reside in Nicaragua

Sector: Private Security Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Measures: Manual de la Vigilancia Civil, No. 001, July 6, 1998, Art. 6

Description: Cross-Border Services

An enterprise must be established in Nicaragua to operate a private security guard company. Natural persons serving as armed guards must be Nicaraguan nationals.

Sector: Radio Broadcast, Free Television Reception

Affected Obligation: National Treatment (Articles 10.3 and 11.2)

Measures: Ley de Reforma a la Ley No. 200, "Ley General de Telecomunicaciones y Servicios Postales", Law No. 326, published in La Gaceta No. 244, December 22, 1999, Art. 1

Reglamento del Servicio de Radiodifusión Televisiva, Administrative Agreement No. 07-97, published in La Gaceta No. 228, November 28, 1997, Art. 12

Description: Cross-Border Services and Investment

A license for operating free over the air television and radio broadcast services (known under Nicaraguan law as "medios de comunicaci6n social") may only be granted to Nicaraguan persons. In the case of enterprises, Nicaraguan nationals must own 51 percent of the capital.

Sector: Communications - Professional Radio and Television Broadcast Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Measures: En Radiodifusoras y Televisiones del País, Únicamente Locutores Nicaragüenses Podrán ser Utilizados para las Narraciones de Programas Deportivos, Decree No. 66, published in La Gaceta No. 256, November 10, 1972, Arts. 1 and 3

Description: Cross-Border Services

Enterprises that supply radio and television broadcast services in Nicaragua shall only use the professional services of announcers who are Nicaraguan nationals for narration, commentary, and live broadcast in sports or similar commercial programs.

Notwithstanding the foregoing, foreign nationals will be allowed to serve as announcers if the laws of their own countries

allow Nicaraguan nationals to supply such services.

The provisions of this measure shall not apply to the broadcast of programs by foreign announcers when the transmission of such programs is aimed exclusively at other countries.

Sector: Electricity Distribution

Obligations Concerned: Local Presence (Article 11.5)

Measures: Ley de la Industria Eléctrica, Law No. 272, published in La Gaceta No.74, April 23, 1998, Arts. 4 and 76

Description: Cross-Border Services

In order to engage in the distribution of electricity an enterprise must be organized under Nicaraguan law.

Sector: Services Incidental to Mining - Hydrocarbons

Obligations Concerned: Local Presence (Article 11.5)

Measures: Ley Especial de Exploración y Explotación de Hidrocarburos, Law No. 286, published in La Gaceta No. 109, June 12, 1998, Art. 11

Reglamento a la Ley Especial de Exploración y Explotación de Hidrocarburos, Decree No. 43-98, published in La Gaceta No. 117, June 24, 1998, Arts. 5 and 6

Description: Cross-Border Services

An enterprise that supplies hydrocarbon exploration and testing services must be organized under Nicaraguan law.

To conduct studies of hydrocarbons such as geological or geophysical studies, drafting topographic maps, seismic, or geochemical studies, a foreign national must designate a legal representative permanently domiciled in Nicaragua.

Sector: Services Incidental to Mining - Metallic and Non-Metallic Minerals

Obligations Concerned: Local Presence (Article 11.5)

Measures: Reglamento de la Ley No. 387, Ley Especial de Exploración y Explotación de Minas, Decree No. 119 -2001, published in La Gaceta No. 4, January 7, 2002, Art. 31

Description: Cross-Border Services

In order to obtain a concession for exploration for metallic and nonmetallic minerals in Nicaragua an enterprise must be organized under Nicaraguan law. A foreign national not resident in Nicaragua must appoint a legal representative domiciled in Managua, Nicaragua.

Sector: Fisheries and Services Incidental to Fishing

Obligations Concerned: National Treatment (Articles 10.4 and 11.2) Performance Requirements (Article 10.9) Local presence (Article 11.5)

Measures: Ley de Licitación Pública de Licencias y Concesiones Pesqueras, Law No.165, February 22, 1994, Art. 6

Ley Especial sobre Explotacion de la Pesca, Decree No. 557, published in La Gaceta No. 32, February 7, 1961, Arts. 2 and 9

Normativa para la Pesca y Acuicultura en Nicaragua, Acuetdo Ministerial Agreement DGRN-PA. No. 359-2004, Arts. 11 and 78

Description: Cross-Border Services and Investment

Processing, packing, and other services related to fishing products must be carried out by enterprises organized under Nicaraguan law and licensed in Nicaragua.

Processing and packing for export of fishing products captured in Nicaraguan territorial waters shall be carried out in enterprises in Nicaragua.

Only Nicaraguan nationals may engage in artisinal fishing as a family enterprise for subsistence.

Sector: Land Transportation

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Measures: Ley General de Transporte, Decree No. 164, published in La Gaceta No. 34, February 17, 1986, Art. 2

Ley Reglamentaria para la Emisión y Obtención de las Licencias de Funcionamiento en el Transporte Terrestre, Decree No. 1140, published in La Gaceta No. 280, November 30,1982, Art. 7

Comunicado del Ministerio de Construcción y Transporte, November 12, 1990

Description: Cross-Border Services

To supply point-to-point land transportation of cargo or passengers within Nicaragua, an enterprise must be established in Nicaragua.

An enterprise organized under the laws of a foreign country may supply international land transportation of cargo or passengers to the extent that a specific agreement between such country and Nicaragua provides for reciprocal treatment of enterprises organized under the laws of Nicaragua. Notwithstanding the foregoing, only Nicaraguan persons may supply collective land transportation services in the interior of Nicaragua.

Sector: Maritime Transportation

Obligations Concerned: National Treatment (Article 11.2)

Measures: Ley de Transporte Acuático, Law No. 399, published in La Gaceta No. 166, September 3, 2001, Arts. 44, 45, and 48

Ley Reguladora para el Servicio de Practicaje, Decree No. 15-49, published in La Gaceta No. 4, January 5, 1985, Art. 64

Description: Cross-Border Services

In order to operate as a shipowner or shipping enterprise in Nicaragua, a natural person must be a Nicaraguan national and an enterprise must be organized under Nicaraguan law.

To operate as a shipping agent, general shipping agent, or shipping consignment agent, a natural person must be a Nicaraguan national, and an enterprise must be organized under Nicaraguan law.

Only a Nicaraguan nationals or an enterprise established in Nicaragua may obtain a route concession to engage in maritime transportation.

Cabotage is reserved exclusively for enterprises established in Nicaragua.

Only Nicaraguan nationals may be named as official pilots for any port in Nicaragua.

Sector: Ports

Obligations Concerned: Market Access (Article 11.4)

Measures: Creación de la Empresa Portuaria Nacional, Decree No. 35-95, published in La Gaceta No. 119, June 27, 1995, Arts. 6 and 7

Description: Cross-Border Services

The administration and operation of the existing ports of national interest (Corinto, Sandino, San Juan del Sur, Cabezas, El Rama and El Bluff) is reserved to the Empresa Portuaria Nacional (EPN).

Sector: Air Transportation - Repair and Maintenance Services, Specialty Air Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Measures: Código de Aviación Civil, Decree No. 176, published November 22, 1956, with corrections on September 3, 1957, Arts. 32, 120, and 121

Reglamento para la Aviación Agrícola, Decree No. 36-A, published in La Gaceta No. 136, June 19, 1962, Arts. 11 and 13

Description: Cross-Border Services

The authorization of the Dirección General de Aerondutica Civil is required to supply specialty air services and aircraft repair

services in the territory of Nicaragua.

Only Nicaraguan nationals or enterprises organized under Nicaraguan law may supply private, for profit air services. For greater certainty, private air services include:

(a) air-related tasks such as aero-topography, aero-photography, commercial advertising, and other similar tasks;

(b) agricultural fumigation services;

(c) industrial activities other than public transportation; and

(d) scientific civil aviation applications, such as educational flights, the determination of hurricane trajectories and migratory birds, and other similar applications.

Flight personnel who participate in aviation activities for agricultural purposes within the national territory must be Nicaraguan nationals. Similarly, aircraft used for such purposes must be licensed in Nicaragua.

Only Nicaraguan technical personnel may engage in remunerated repair and maintenance services or specialty air services in Nicaragua. In the absence of such personnel, the DirecciÃ©n General de Aerondutica Civil may allow foreign pilots or other technical personnel to engage in such activities, in which case the Direccidn

General de Aerondutica Civil must give preference to nationals of other Central American Parties.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)

Measures: Código de Aviación Civil, Decree No. 176, published November22, 1956, with corrections on September 3, 1957, Arts. 75, 120, and 121

Investment

Only an enterprise organized under Nicaraguan law may be granted a license to engage in public air transportation services. Nicaraguan nationals must own at least 51 percent of the capital, have effective control, and be in the senior management positions of such enterprises.

Only Nicaraguan nationals and enterprises organized under Nicaraguan law may engage in remunerated private air transportation services.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Measures: Ley de Incorporación de Profesionales en Nicaragua, Decree No. 132, published in La Gaceta No. 47, November 2, 1979, Art. 5

Description: Cross-Border Services

A foreign professional may practice in Nicaragua in a form and subject to the same conditions that are permitted for Nicaraguans in the country of origin of such professional.

Nicaragua agrees that if a jurisdiction in a foreign country allows Nicaraguan nationals to apply for and receive the licenses or certificates necessary to practice a profession in such jurisdiction, a foreign national with a license or certificate to practice the profession in such jurisdiction shall also be allowed to apply for and receive any license or certificate necessary to practice in Nicaragua.

In addition, the relevant professional association in Nicaragua will recognize a license granted by a foreign jurisdiction, and allow the holder of that license to register with the association and practice the profession in Nicaragua based on the foreign license, in the following cases:

(a) no academic institution in Nicaragua offers a course of study that would allow the practice of the profession in Nicaragua;

(b) the holder of the license is a recognized expert in the profession; or

(c) allowing the professional to practice in Nicaragua will, through training, demonstration, or other such opportunity,

further the development of the profession in Nicaragua.

Sector: Public Accounting and Auditing

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Measures: Ley para el Ejercicio de Contador Público, Law No. 6 published in La Gaceta, April 30, 1959, Art. 19

Description: Cross-Border Services

Foreign public accounting firms, auditors, and accountants, either as individuals or enterprises, may exercise their profession in Nicaragua, or other related activity, through an authorized Nicaraguan public accounting firm or association.

Sector: Professional Services - Notary Publics

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)

Measures: Ley del 19 de noviembre de 1938, published in La Gaceta No. 267, December 10, 1938, Art.1

Ley del Notariado, Annex to Código de Procedimiento Civil de Nicaragua, Art. 10

Description: Cross-Border Services

Public notaries must be Nicaraguan nationals by birth authorized by the Supreme Court of Justice in order to practice their profession.

Central American nationals by birth authorized to act as attorneys in the Republic may also obtain this authorization after residing in Nicaragua at least five years, provided they are allowed to exercise their profession as public notaries in their own countries, and that Nicaraguans are authorized to act as public notaries in their respective countries.

Sector: Customs Brokers

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Measure: Ley que Establece el Autodespacho para la Importación, Exportación y otros Regímenes, Law No. 265, published in La Gaceta No. 219, November 17, 1997, Arts. 49, 50, and 52

Description: Cross Border Services

A customs broker must be a Nicaraguan national or a national of a country that permits Nicaraguan nationals to serve as customs brokers.

An enterprise operating as a customs broker in Nicaragua must be organized under Nicaraguan law and at least one official of the customs enterprise must have a valid license.

Sector: Scientific Research Services

Obligations Concerned: Local Presence (Article 11.5)

Measures: Ley General sobre Explotación de Nuestras Riquezas, Decree No. 316, published in La Gaceta, April 17, 1958, Art. 83

Description: Cross-Border Services

To engage in scientific research activities related to natural resources a foreign national must have a legal representative in Nicaragua during the entire time the research is being conducted.

Sector: Regime on Free Zones and Regime on Active Improvement

Obligations Concerned: Performance Requirements (Article 10.9)

Measures: Reglamento del Decreto de Zonas Francas Industriales de Exportacion, Decree No. 31-92, published in La Gaceta No.112, June 12, 1992, Arts. 22 and 67

Description: Investment

An enterprise authorized to operate in a free zone may introduce up to 40 percent of its production by volume into the

territory of Nicaragua after payment of duties and taxes, depending on whether it falls under category A (or "primera categoría"), B (or "segunda categoría"), or C (or "tercera categoría").

Nicaragua will apply this measure consistent with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

Sector: Telecommunications

Obligations Concerned: Market Access (Article 11.4) National Treatment (Article 11.2)

Measures: Contrato de Concesión del Instituto Nicaragüense de Telecomunicaciones y Correos published in La Gaceta No. 67, April 12, 2002, clause 8.1

Description: Cross-Border Services

The Empresa Nicaragüense de Telecomunicaciones (ENITEL) has an exclusive regime for providing basic telephone services, including local telephone service, national and international long distance, and supply of television and telegraph links, pursuant to its concession contract. ENITEL exclusivity will end according to Nicaraguan law or concession but in any event no later than April 13, 2005.

Sector: Development of Maps

Obligations Concerned: Market Access (Article 11.4)

Measures: Ley Orgánica del Instituto Nicaragüense de Estudios Territoriales (INETER), Law No. 311, published in La Gaceta No. 103, July 28, 1999, Art. 4

Description: Cross-Border Services

The developing, drafting, editing, and publishing of official regional, property, urban, and rural maps, as well as thematic maps and hydrographical, nautical, and aeronautical charts of Nicaragua in different scales is reserved to the Instituto Nicaragtiense de Estudios Territoriales.

Sector: Potable Water, Sanitary Sewer Systems, and Sewage Collection and Disposal.

Affected Obligation: Market Access (Article 11.4)

Measures: Ley de Creación de la Empresa Nicaragüense de Acueductos y Alcantarillados Sanitarios (ENACAL), Law No. 276, published in La Gaceta No. 12, January 20, 1998, Art. 3

Ley de Suspensión de Concesiones de Uso de Aguas, Law No. 440, Arts. 2 and 3

Description: Cross-Border Services

The establishment, construction, and development of public works for the supply and distribution of drinking water, and collecting and disposing of wastewater, may only be performed by the Empresa Nicaragiiense de Acueductos y Alcantarillados Sanitarios (ENACAL).

ENACAL is the State entity responsible for providing potable water and collecting and disposing of wastewater, and has the following functions:

(a) to capture, treat, conduct, store, distribute, and sell potable water; and to gather, treat and finally dispose of wastewater;

(b) to purchase natural water, purchase and sell potable water, as well as to commercialize the services of collection, treatment and final disposal of wastewater;

(c) take all necessary measures so that the release of treated wastewater minimizes the environmental impact;

(d) develop the Company's Expansion Plan for the short, medium and long terms;

(e) investigate, explore, develop, and exploit the water resources; and

(f) any other activity required for its development.

Sector: Airports

Affected Obligation: Market Access (Article 11.4)

Measures: Ley de la Empresa Administradora de Aeropuertos Internacionales, Decree No. 1292, published in La Gaceta No. 186, August 16, 1983, Art. 3

Description: Cross-Border Services

The Empresa Administradora de Aeropuertos Internacionales (EAAI) is responsible for establishing, operating, administering, carrying out works, and providing services in international airports.

Sector: Energy Services

Obligations Concerned: Market Access (Article 11.4)

Measures: Ley de la Industria Eléctrica, Law No. 272, published in La Gaceta No. 74, April 23, 1998, Arts. 27 and 58

Description: Cross-Border Services

Electricity transmission services may only be provided by the Centro Nacional de Despacho de Carga.

Sector: Administration of Lotteries

Obligations Concerned: Market Access (Article 11.4)

Measures: Reglamento Interno de la Lotería Nacional, published in La Gaceta No. 229, December 3, 1996, Arts. 4 and 5

Description: Cross-Border Services

Only the Loteria Nacional, a State-owned enterprise, may administer lotteries, drawings, raffles, promotions, and games of chance for money or prizes. Notwithstanding the preceding sentence, commercial promotions are allowed through the prior authorization of the Loteria Nacional, which shall be freely granted.

Sector: Public Communications Services

Obligations Concerned: Market Access (Article 11.4)

Measures: Ley General de Telecomunicaciones y Servicios Postales, Law No. 200, published in La Gaceta No. 154, August 18, 1995, Art. 118

Description: Cross-Border Services

The issuance, finance, and marketing of postal stamps, as well as the usage of franking machines and other analogous systems, is reserved to the Correos de Nicaragua.

Annex I. Schedule of the United States

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.

Description: Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear "utilization or production facilities" for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear "utilization and production facilities," for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

Sector: Business Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Export Trading Company Act of 1982, 15 U.S.C. §§ 4011-4021 15 C.F.R. Part 325

Description: Cross-Border Services

Title II of the Export Trading Company Act of 1982 authorizes the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a "person" as defined by the Act can apply for a certificate of review. "Person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons."

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement."

Sector: Business Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Export Administration Act of 1979, as amended, 50 U.S.C. app. §§ 2401-2420

International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706

Export Administration Regulations, 15 C.F.R. Parts 730 - 774

Description: Cross-Border Services

With some limited exceptions, exports and reexports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States.

In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

Sector: Mining

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Mineral Lands Leasing Act of 1920, 30 U.S.C. Chapter 3A 10 U.S.C. § 7435

Description: Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on- shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-US. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).

Nationalization is not considered to be denial of similar or like privileges.

Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: 22 U.S.C. §§ 2194 and 2198(c)

Description: Investment

The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VI, Aviation Programs

14 C.F.R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)

Description: Investment

Only air carriers that are "citizens of the United States" may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.

U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under 49 U.S.C. § 40102(a)(15), a "citizen of the United States" means:

(a) an individual who is a U.S. citizen;

(b) a partnership in which each member is a U.S. citizen; or

(c) a U.S. corporation of which the president and at least two- thirds of the board of directors and other managing officers are U.S. citizens, and at least 75 percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

Sector: Air Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: 49 US.C., Subtitle VII, Aviation Programs

49 U.S.C. Â§ 41703

14 C.F R. Part 375

As qualified by paragraph 2 of the Description element

Description: Cross-Border Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.*

Investment

2. "Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. Â§ 40102(a)(15), a "citizen of the United States" means:

(a) an individual who is a U.S. citizen;

(b) a partnership in which each member is a U.S. citizen; or

(c) a U.S. corporation of which the president and at least two- thirds of the board of directors and other managing officers are U.S. citizens, and at least seventy-five percent of the voting interest in the corporation is owned or controlled by US. citizens.

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

*A person of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua will be able to obtain such an authorization given their governments' acceptance of the U.S. definition of specialty air services in Chapter Eleven (Cross- Border Trade in Services).

Sector: Transportation Services - Customs Brokers

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: 19 U.S.C. § 1641(b)

Description: Cross-Border Services and Investment

A customs broker’s license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association, or partnership established under the law of any state may receive a customs broker’s license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker’s license.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Securities Act of 1933, 15 U.S.C. §§ 77c(b), 77f, 77g, 77h, 77j, and 77s(a)

17 C.F.R. §§ 230.251 and 230.405

Securities Exchange Act of 1934, 15 U.S.C. §§ 78l, 78m, 780(d), and 78w(a)

17 CER. § 240.12b-2

Description: Investment

Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities

Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: 47 U.S.C. § 310

Foreign Participation Order 12 FCC Rcd 23891 (1997)

Description: Investment

The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions. Radiocommunications consists of all communications by radio, including broadcasting.

Sector: Professional Services - Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Services

As a condition to be registered to practice for others before the US. Patent and Trademark Office (USPTO):

(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a));

(b) a patent agent must be a US. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. §10.6(c)); and

(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 10.14(a)-(c)).

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico

Description: Cross-Border Services and Investment

Annex II.

Explanatory Note

1. The Schedule of a Party of this Annex sets out, pursuant to Articles 10.13 (Non- Conforming Measures) and 11.6 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Articles 10.3 (National Treatment) or 11.2 (National Treatment);

(b) Articles 10.4 (Most-Favored-Nation Treatment) or 11.3 (Most-Favored-Nation Treatment);

(c) Article 11.5 (Local Presence)

(d) Article 10.9 (Performance Requirements);

(e) Article 10.10 (Senior Management and Boards of Directors); or

(f) Article 11.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non- Conforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry;

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Article 10.13 (Non-Conforming Measures) and 11.6 (Non- Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

Annex II. Schedule of Costa Rica

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

Costa Rica reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Costa Rica reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: Cultural Industries

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

Costa Rica reserves the right to adopt or maintain any measure that accords differential treatment to countries under any existing or future bilateral or multilateral international agreement with respect to cultural industries, such as audiovisual cooperation agreements. For greater certainty, government supported subsidy programs for the promotion of cultural activities are not subject to the limitations or obligations of this Agreement.

Cultural industries means persons engaged in any of the following activities:

(a) Publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;

(b) Production, distribution, sale, or display of recordings of movies or videos;

(c) Production, distribution, sale, or display of music recordings in audio or video format;

(d) Production, distribution, or sale of printed music scores or scores readable by machines; or

(e) Radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 11.4)

Description: Cross-Border Services and Investment

Costa Rica reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public sewage services, and water supply services.

Annex II. Schedule of the Dominican Republic

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Description: Investment

The Dominican Republic reserves the right to adopt or maintain any measure relating to the ownership or control of land within 20 kilometers of the Dominican border.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)

Description: Investment

The Dominican Republic reserves the right to limit the transfer or disposal of any interest held in an existing state enterprise, such that only a Dominican national may receive such interest. However, the preceding sentence pertains only to the initial transfer or disposal of such interest. The Dominican Republic does not reserve this right with respect to subsequent transfers or disposals of such interest.

The Dominican Republic reserves the right to limit control of any new enterprise created by the transfer or disposal of any interest as described in the preceding paragraph, but not through limitations on the ownership of the interest. The Dominican Republic also reserves the right to adopt or maintain any measure related to the nationality of senior management and members of the board of directors in such new enterprise.

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

The Dominican Republic reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The Dominican Republic reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fishing; or

(c) maritime affairs, including salvage.

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

The Dominican Republic reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home and direct broadcasting satellite television services and digital audio services.

Sector: Governmental Finances

Obligations Concerned: National Treatment (Article 10.3)

Description: Investment

The Dominican Republic reserves the right to adopt or maintain any measure relating to the restriction of the acquisition by foreign nationals of bonds, treasury securities, fixed-term instruments, or other instruments of public debt issued for particular sectors by the Central Bank or the Government of the Dominican Republic. This non-conforming measure is not intended to affect the rights of United States financial institutions (banks) established in the Dominican Republic, to acquire, sell, or dispose of such instruments when required for purposes of regulatory capital.

Sector: Services Related to Craft Industry

Obligations Concerned: National Treatment (Article 11.2) Market Access (Article 11.4)

Description: Cross-Border Services

The Dominican Republic reserves the right to adopt or maintain any measure relating to the distribution, retailing, or exhibition of handicrafts that are identified as handicrafts of the Dominican Republic.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The Dominican Republic reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector: Socially and Economically Disadvantaged Groups

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirement (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The Dominican Republic reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged groups.

Annex II. Schedule of El Salvador

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross Border Services and Investment

El Salvador reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

El Salvador reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Market Access (Article 11.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

El Salvador reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

El Salvador reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

Sector: Transport Services: Road Transport Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Description: Cross-Border Services

El Salvador reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure restricting the transportation of goods by road.

Annex II. Schedule of Guatemala

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.3 and 10.4)

Level of Government: Central

Description: Cross-Border Services and Investment

Guatemala reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Guatemala reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation,

(b) fisheries, or

(c) maritime matters, including salvage.

Sector: Maritime Transportation

Obligations Concerned: National Treatment (Articles 11.2 and 10.3) Most-Favored-Nation Treatment (Articles 11.3 and 10.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Description: Cross-Border Services and Investment

Guatemala reserves the right to adopt or maintain any measure related to the provision of maritime transportation services.

Sector: Matters Related to Disadvantaged Minorities and Indigenous Peoples

Obligations Concerned: National Treatment (Articles 11.2 and 10.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Description: Cross-Border Services and Investment

Guatemala reserves the right to adopt or maintain any measure that grants rights or preferences to socially or economically disadvantaged minorities and indigenous peoples.

Annex II. Schedule of Honduras

Sector: Communications Services - Telecommunications

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 11.4)

Description: Cross-Border Services and Investment

Honduras reserves the right to adopt, maintain, or modify the level of participation in the ownership of the Empresa Hondurefia de Telecomunicaciones (HONDUTEL), as well as its affiliates or subsidiaries.

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

Honduras reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Honduras reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: Agronomists

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Description: Cross-Border Services

Honduras reserves the right to adopt or maintain any measure that pertains to obligatory membership in a professional association of agronomists.

Sector: Social Workers

Obligations Concerned: National Treatment (Article 11.2)

Description: Cross-Border Services

Honduras reserves the right to adopt or maintain any measure that pertains to obligatory membership in a professional association of social workers.

Sector: Chemists and Pharmacists

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Description: Cross-Border Services

Honduras reserves the right to adopt or maintain any measure that pertains to obligatory membership in a professional association of chemists or pharmacists.

Sector: Social Services

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

Honduras reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

Honduras reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

Annex II. Schedule of Nicaragua

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)

Description: Investment

Nicaragua reserves the right to limit the transfer or disposal of any interest held in an existing state enterprise, such that only a Nicaraguan national may receive such interest. However, the preceding sentence pertains only to the initial transfer or disposal of such interest. Nicaragua does not reserve this right with respect to subsequent transfers or disposals of such interest.

Nicaragua reserves the right to limit control of any new enterprise created by the transfer or disposal of any interest as described in the preceding paragraph through means other than limitations on the ownership of the interest. Nicaragua also reserves the right to adopt or maintain any measure related to the nationality of senior management and members of the board of directors in such new enterprise.

Sector: Minority Affairs and Indigenous Peoples

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

Nicaragua reserves the right to adopt or maintain any measure granting rights or preferences to socially or economically

disadvantaged minorities and indigenous peoples.

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

Nicaragua reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

Nicaragua reserves, vis-a-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Nicaragua reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: Coastal Lands, Islands, and River Banks

Obligations Concerned: National Treatment (Article 10.3)

Description: Investment

Nicaragua reserves the right to adopt or maintain any measure with respect to coastal lands, islands, and river banks under the possession of Nicaragua.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

Nicaragua reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Annex II. Schedule of the United States

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.3 and 11.2)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of

direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: Communications - Cable Television

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)

Description: Investment

The United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 10.4)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act.

Existing Measures: Alaska Native Claims Settlement Act, 43 U.S.C. Â§Â§ 1601 et seq.

Sector: Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;

(b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;

(c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;

(d) requirements related to documenting a vessel under the US. flag;

(e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;

(f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;

(g) manning requirements for U.S.-flagged vessels;

(h) all matters under the jurisdiction of the Federal Maritime Commission;

(i) negotiation and implementation of bilateral and other international maritime agreements and understandings;

(j) limitations on longshore work performed by crew members;

(k) tonnage duties and light money assessments for entering U.S. waters; and

(l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment provided to a Party under (b) is conditional upon obtaining comparable market access in these sectors from that Party:

(a) vessel construction and repair; and

(b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies.

Existing Measures: Merchant Marine Act of 1920, §§ 19 and 27, 46 U.S.C. App. § 876 and § 883 et seq.

Jones Act Waiver Statute, 64 Stat 1120, 46 U.S.C. App.,note preceding Section 1

Shipping Act of 1916, 46 U.S.C. App. §§ 802 and 808

Merchant Marine Act of 1936, 46 U.S.C. App. §§ 1151 et seq., 1160-61, 1171 et seq., 1241(b), 1241-1, 1244, and 1271 et seq.

Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1738

46 U.S.C. App. §§ 121, 292, and 316

46 U.S.C. §§ 12101 et seq. and 31301 et seq.

46 U.S.C. §§ 8904 and 31328(2)

Passenger Vessel Act, 46 U.S.C. App. § 289

42 U.S.C. §§ 9601 et seq.; 33 U.S.C. §§ 2701 et seq.;

33 U.S.C. §§ 1251 et seq.

46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103, and 12107(b)

Shipping Act of 1984, 46 U.S.C. App. §§ 1708 and 1712

The Foreign Shipping Practices Act of 1988, 46 U.S.C.App. § 1710a

Merchant Marine Act, 1920, 46 U.S.C. App. §§ 861 et seq.

Shipping Act of 1984, 46 U.S.C. App. §§ 1701 et seq.

Alaska North Slope, 104 Pub. L. 58; 109 Stat. 557

Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 et seq.

Vessel escort provisions, Section 1119 of Pub. L. 106-554, as amended

Nicholson Act, 46 U.S.C. App. § 251

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, 46 U.S.C. § 2101 and 46 U.S.C. § 12108

43 U.S.C. § 1841

22 U.S.C. § 1980

Intercoastal Shipping Act, 46 U.S.C. App. § 843

46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the Operation of Pilotage on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445

Magnuson Fishery Conservation and Management Act, 16

U.S.C. §§ 1801 et seq.

19 U.S.C. § 1466

North Pacific Anadramous Stocks Convention Act of 1972,

P.L. 102-587; Oceans Act of 1992, Title VII

Tuna Convention Act, 16 U.S.C. §§ 951 et seq.

South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973 et seq.

Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 et seq.

Atlantic Tunas Convention Act, 16 U.S.C. §§ 971 et seq.

Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. §§ 2431 et seq.

Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631 et seq.

American Fisheries Act, 46 U.S.C. § 12102(c) and 46

U.S.C. § 31322(a)

Sector: All

Obligations Concerned: Market Access (Article 11.4)

Description: Cross-Border Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services.

Sector: All

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.