

# **FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF TURKEY**

PREAMBLE The Republic of Chile and the Republic of Turkey (hereinafter referred to as "the Parties" or "Chile" or "Turkey" where appropriate);

DESIROUS to develop and strengthen friendly relations, especially in the fields of economic co-operation and trade, with an aim to contribute to the progress of economic co-operation and to promote mutually beneficial bilateral trade;

HAVING regard to the experience gained from the co-operation developed between the Parties as well as between them and their main trading partners;

RESOLVED to lay down for this purpose provisions aimed at the progressive abolition of the obstacles to trade between the Parties in accordance with the provisions of these instruments, in particular those concerning the establishment of free trade areas;

DECLARING their readiness to undertake activities with a view to promoting harmonious development of their trade as well as to expanding and diversifying their mutual co-operation in the fields of joint interest, thus creating a framework and supportive environment based on equality, non discrimination, and a balance of rights and obligations;

RESOLVED to contribute to the strengthening and reinforcement of the multilateral trading system as established through the World Trade Organization (WTO);

DESIROUS to develop their relations in the field of sustainable development and environmental protection and conservation, and to improve working conditions and living standards in their respective countries and protect, enhance and enforce the fundamental worker's rights;

HAVE AGREED as follows:

## **Title I. Initial Provisions**

### **Article 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 (hereinafter referred to as "GATT 1994"), hereby establish a free trade area.

### **Article 2. Objectives**

The objectives of this Agreement are:

- a) to increase and enhance the economic cooperation between the Parties and raise the living standards of the people of the two countries;
- b) to promote the expansion of trade through the harmonious development of the economic relations between the Parties;
- c) to gradually eliminate difficulties and restrictions on trade in goods;
- d) to contribute by the removal of barriers to trade, to the harmonious development and expansion of world trade; and
- e) to provide fair conditions of competition in trade between the Parties.

### **Article 3. Relation to other International Agreements**

The Parties confirm their rights and obligations under the Marrakesh Agreement establishing the World Trade Organization

(hereinafter referred to as "the WTO Agreement") and the other agreements negotiated thereunder to which they are a party, and under any other international agreement to which they are a party.

## **Article 4. Customs Unions and Free Trade Areas**

1. Nothing in this Agreement shall preclude the maintenance or establishment of customs unions, free trade areas or other arrangements between either of the Parties and third countries, insofar as they do not alter the rights and obligations provided for in this Agreement.

2. At the request of a Party, consultations between them shall take place within the Joint Committee concerning agreements establishing or adjusting customs unions or free trade areas and, where required, on other major issues related to the Parties' respective trade policies with third countries.

## **Article 5. Definitions of General Application**

For the purposes of this Agreement, unless otherwise specified:

- a) "days" means calendar days, including weekends and holidays;
- b) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, practice, decision, administrative action or any other form;
- c) "publish" includes publication in written form or on the internet.

## **Title II. Market Access for Goods**

### **Chapter I. COMMON PROVISIONS**

#### **Article 6. National Treatment**

Each Party shall accord National Treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes; and to this end Article III of GATT 1994, and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

#### **Article 7. Classification and Valuation of Goods**

1. The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonized Commodity Description and Coding System (hereinafter referred to as "the Harmonized System" or "HS").

2. For the purposes of determining the customs value of goods traded between the Parties, provisions of Part I of the Agreement on Implementation of Article VII of the GATT 1994, as may be amended, shall apply *mutatis mutandis*.

#### **Article 8. Customs Duty**

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

- a) internal taxes or other internal charges imposed consistently with Article 59;
- b) antidumping or countervailing duties applied consistently with Article 34; and
- c) fees or other charges imposed consistently with Article 14.

#### **Article 9. Basic Duties**

1. For each product, the basic duty to which successive reductions set out in this Agreement are to be applied shall be the Most Favored Nation (MFN) duty that was in force in the Parties on the date of entry into force of this Agreement.

2. If after the entry into force of this Agreement, any tariff reduction is applied on an *erga omnes* basis, in particular,

reductions resulting from the tariff negotiations in the WTO, such reduced duties shall replace the basic duties referred to in paragraph 1 as from that date when such reductions are applied.

3. The Parties shall communicate to each other their respective basic duties.

## **Article 10. Rules of Origin and Cooperation between the Customs Administrations**

1. Annex V to this Agreement lays down the rules of origin and related methods of administrative co-operation.

2. For the purposes of the effective implementation and operation of Annex V, the Parties hereby establish a Sub-Committee on Customs and Rules of Origin. The functions of the Sub-Committee on Customs and Rules of Origin shall be:

a) reviewing the implementation and operation of Annex V;

b) reporting its findings to the Joint Committee;

c) identifying areas, relating to Annex V to be improved for facilitating trade in goods between the Parties; and d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 54.

3. The Sub-Committee on Customs and Rules of Origin shall meet as may be agreed by the Parties.

4. The Sub-Committee on Customs and Rules of Origin shall be composed by representatives from the competent authorities of the Parties. Other Governmental Authorities may be invited to the Sub-Committee on Customs and Rules of Origin meetings whenever it is deemed necessary.

5. The terms of reference of the Sub-Committee on Customs and Rules of Origin shall be determined in the first meeting of the Joint Committee.

## **Article 11. Customs Duties of a Fiscal Nature**

The provisions concerning the abolition of customs duties on imports shall also apply to customs duties of a fiscal nature.

## **Article 12. Customs Duties on Exports and Charges Having Equivalent Effect**

1. Customs duties and charges having equivalent effect on exports shall be abolished between the Parties upon the entry into force of this Agreement.

2. From the date of entry into force of this Agreement, no new customs duties on exports or charges having equivalent effect shall be introduced in trade between the Parties.

## **Article 13. Import and Export Restrictions**

Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of 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*.

## **Article 14. Fees and other Charges**

Each Party shall ensure, in accordance with Article VIII of the GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges, applied consistently with Article III paragraph 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 goods or a taxation of imports or exports for fiscal purposes.

## **Article 15. Re-export and Serious Shortage**

1. Where compliance with the provisions of Article 13 leads to:

a) re-export towards a third country against which the exporting Party to this Agreement maintains for the product concerned quantitative export restrictions, export duties or measures or charges having equivalent effect;

b) a serious shortage, or threat thereof, of a product essential to the exporting Party; or

c) a shortage of essential quantities of domestic materials for a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

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

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

4. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

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

## **Chapter II. ELIMINATION OF CUSTOMS DUTIES**

### **Section I. INDUSTRIAL PRODUCTS**

#### **Article 16. Scope**

The provisions of this Section shall apply to products originating in the Parties falling within Chapters 25 to 97 of the Harmonized System; with the exception of the products listed in Annex I of this Agreement.

#### **Article 17. Customs Duties on Imports and Charges Having Equivalent Effect**

1. Customs duties on imports into Turkey of goods originating in Chile shall be abolished upon the entry into force of this Agreement.

2. Customs duties on imports into Chile of goods originating in Turkey, other than those listed in Annex II and Annex III shall be abolished upon the entry into force of this Agreement.

3. Customs duties on imports into Chile of goods originating in Turkey, which are listed in Annex II shall be progressively abolished in accordance with the timetable laid down thereof.

4. Customs duties on imports of products which are listed in Annex III shall not be subject to the concessions referred to in this Article.

5. From the date of entry into force of this Agreement no new customs duties on imports or charges having equivalent effect shall be introduced in trade between the Parties.

6. Turkey and Chile shall abolish in trade between themselves any charges having an equivalent effect to customs duties on imports upon the entry into force of this Agreement.

### **Section II. AGRICULTURAL, PROCESSED AGRICULTURAL AND FISHERY PRODUCTS**

#### **Article 18. Scope**

1. The provisions of this Section shall apply to basic agricultural, processed agricultural and fishery products (hereinafter referred to as "agricultural products") originating in the territory of each Party.
2. The term "agricultural products" means, for the purposes of this Agreement, the products falling within Chapters 01 to 24 of the Harmonized System and including the products listed in Annex I of this Agreement.

## **Article 19. Exchange of Concessions**

1. The Parties to this Agreement shall mutually allocate concessions set forth in Annex IV in accordance with the provisions of this Section.
2. Taking into account the role of agriculture in their respective economies, the development of trade in agricultural products and the rules of their respective agricultural policies, the Parties shall examine in the Joint Committee the possibilities of granting further concessions to each other in trade in agricultural products. If a decision to improve the conditions of access is agreed, the Parties will evaluate the increase of the current quotas and the reduction or elimination of customs duties.

## **Article 20. Price Band System**

Chile may maintain its price band system as established under its Law No. 18.525 or succeeding system for the products covered by that law, provided it is applied consistent with Chile's rights and obligations under the WTO Agreement and in a manner that does not afford more favorable treatment to imports of any third country, including countries with which Chile has concluded or will conclude in the future an agreement notified under Article XXIV of the GATT 1994.

## **Title III. Other Trade Related Provisions**

# **Chapter I. SANITARY AND PHYTOSANITARY MEASURES**

## **Article 21. General Provisions**

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as "the SPS Agreement").
2. The Parties shall not apply their regulations in sanitary and phytosanitary matters as an arbitrary or unjustifiable discrimination or a disguised restriction on trade between them.

## **Article 22. Objectives**

The objectives of this Chapter are:

- a) to facilitate bilateral trade in food, plants and animals and products thereof, while protecting human, animal or plant life or health in the territory of each Party;
- b) to deepen mutual understanding of each Party's regulations and procedures relating to consultations on and implementation of sanitary and phytosanitary measures;
- c) to strengthen cooperation between the Parties' competent authorities that have the responsibility for sanitary and phytosanitary matters; and d) to provide a means to improve communication, cooperation and resolution of sanitary and phytosanitary issues.

## **Article 23. Sub-committee on Sanitary and Phytosanitary Matters**

1. The Parties hereby agree to establish a Sub-Committee on Sanitary and Phytosanitary Matters (hereinafter referred to as "the Sub-Committee on SPS Matters") comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters. The Sub-Committee on SPS Matters shall report to the Joint Committee of its activities.
2. The Sub-Committee on SPS Matters shall provide a forum for:
  - a) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

- b) consulting on issues, positions, and agendas for meetings of the Committee on Sanitary and Phytosanitary Measures and the other relevant international organizations referred to in the SPS Agreement;
  - c) coordinating technical cooperation programs on sanitary and phytosanitary matters;
  - d) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement;
  - e) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' competent authorities with responsibility for such matters; and
  - f) discussing matters with a view to reach a consensus related to consultation process referred to in sub-paragraph (a).
3. The Sub-Committee on SPS Matters shall perform its work in accordance with the terms of reference that will be established during the first meeting of the Joint Committee.
4. The Sub-Committee on SPS Matters shall meet on the request of either Party to consider any matter arising under this Chapter.
5. The Parties agree to establish contact points for the better implementation of this Chapter.

## **Chapter II. TECHNICAL REGULATIONS, STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES**

### **Article 24. Objectives**

The objectives of this Chapter are to increase and facilitate trade by preventing and eliminating unnecessary obstacles to trade and enhancing bilateral cooperation in accordance with the rights and obligations of the Parties with respect to the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement").

### **Article 25. Scope and Coverage**

1. Except as provided in paragraph 2, this Chapter applies to all standards, technical regulations and conformity assessment procedures, as defined in the TBT Agreement that may, directly or indirectly, affect trade in goods between the Parties.
2. Sanitary and phytosanitary measures and technical specifications prepared by governmental bodies for public procurement purposes are not subject to the provisions of this Chapter.

### **Article 26. Definitions**

For the purpose of this Chapter, the definitions of Annex 1 of the TBT Agreement shall apply. In this respect, the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of that Agreement shall also apply.

### **Article 27. Basic Rights and Obligations**

The Parties confirm their rights and obligations with respect to each other under the TBT Agreement.

### **Article 28. Trade Facilitation**

1. The Parties shall intensify their bilateral cooperation in the fields of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between them.
2. To this end, the Parties shall seek to identify trade facilitating bilateral 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 and/or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity and use of accreditation to qualify conformity assessment bodies, as well as cooperation through recognition of the results of the conformity assessment procedures.

### **Article 29. Transparency**

1. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for interested parties to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it 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 Party's enquiry point, which has been established pursuant to Article 10 of the TBT Agreement, at the same time as it sends the notification to the WTO. Each Party should allow, when it is possible, at least 60 days after it transmits a proposal under sub-paragraph (b) to the other Party to make comments on the proposal in writing.

2. 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 to the other Party electronically through the enquiry point referenced in sub-paragraph 1(b).

3. On request of the other Party, a Party shall provide the other Party 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.

### **Article 30. Technical Cooperation**

With a view to fulfill the objectives of this Chapter, the Parties shall, on the request of the other Party and where possible, cooperate towards:

a) exchanging legislation, regulations, rules and other information and periodicals published by the national bodies responsible for technical regulations, standards, conformity assessment, metrology and accreditation;

b) exchanging general information and publications on conformity assessment, certification bodies, including notified bodies, designation and accreditation of conformity assessment bodies;

c) providing technical advice, information and assistance on mutually agreed terms and conditions and exchanging experience to enhance the other Party's system for standards, technical regulations and conformity assessment procedures, and related activities;

d) increasing the information exchange, particularly regarding noncompliance of a product in bilateral trade with relevant technical regulations and conformity assessment procedures of a Party;

e) examining the compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;

f) giving favorable consideration, on request of the other Party, to any sector specific proposal for further cooperation;

g) promoting and encouraging bilateral cooperation between respective organizations, public and/or private, of the Parties responsible for standardization, testing, certification, accreditation and metrology;

h) increasing their bilateral cooperation in the relevant international organizations and fora dealing with the issues covered by this Chapter; and

i) informing the other Party, as far as possible, about the agreements or programs subscribed at international level in relation to TBT issues.

### **Article 31. Sub-committee on Standards, Technical Regulations and Conformity Assessment**

1. The Parties hereby agree to establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment (hereinafter referred to as "the Sub-Committee on TBT Matters"). The Sub-Committee on TBT Matters shall report to the Joint Committee of its activities.

2. The Sub-Committee on TBT Matters may address any matter related to the effective functioning of this Chapter. The responsibilities and functions of the Sub-Committee on TBT Matters shall include:

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

b) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards,

technical regulations or conformity assessment procedures;

c) providing a forum for discussions and exchanging information on Parties' systems for standards, technical regulations, and conformity assessment procedures;

d) promoting, encouraging and otherwise facilitating bilateral cooperation between respective organizations, public and/or private, of the Parties responsible for standardization, testing, certification, accreditation and metrology;

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

f) exploring any means aimed at improving access to the Parties' respective markets and enhancing the functioning of this Chapter; and

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.

3. The Sub-Committee on TBT Matters shall meet at least once a year, unless otherwise agreed by the Parties. By mutual agreement, ad hoc working groups may be established if necessary.

4. The terms of reference of the Sub-Committee on TBT Matters shall be determined in the first meeting of the Joint Committee.

## **Article 32. Information Exchange**

Any information or explanation requested by a Party pursuant to provisions of this Chapter shall be provided by the other Party in print or electronically within a reasonable period of time.

# **Chapter III. TRADE DEFENSE**

## **Article 33. Safeguards**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Safeguards Agreement, and any other relevant provisions in the WTO Agreement, and their successors.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement, and their successors.

## **Article 34. Antidumping and Countervailing Measures**

1. The rights and obligations of the Parties related to antidumping and countervailing measures shall be governed by Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, and their successors.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to the application of antidumping and countervailing measures, referred to in paragraph 1 of this Article.

# **Chapter IV. INTELLECTUAL PROPERTY**

## **Article 35. Intellectual Property**

1. The Parties recognize the importance of intellectual property in promoting economic and social development, technological innovation, as well as in promoting the transfer and dissemination of technology to the mutual advantage of technology producers and users, particularly in the new digital economy.

2. The Parties reaffirm their existing rights and obligations with respect to each other under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement") and any other multilateral intellectual property agreements to which both are party.

3. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent: a) the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology; and b) anticompetitive practices that may result from the abuse of intellectual property



rights provided that such measures are consistent with this Agreement.

4. The Parties shall provide the legal means for interested parties to prevent commercial use of country names of the other Party in relation to goods in a manner which is likely to mislead consumers as to the origin of such goods.

5. Consistent with paragraph 1, the Parties agree to cooperate with each other. Such cooperation may include, inter alia:

a) notification of contact points;

b) exchange of information regarding the intellectual property systems, aimed at promoting the efficient registration of intellectual property rights; c) other activities and initiatives as may be mutually determined between the Parties.

## **Article 36. Spirits**

1. Turkey shall recognize "Pisco" as a Chilean geographical indication for spirits, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Turkey shall not permit the sale of any product as "Pisco", unless it has been manufactured in Chile, according to the laws of Chile governing the manufacture of "Pisco". This shall not prejudice the rights that Turkey may recognize, in addition to Chile, exclusively to Peru with respect to "Pisco".

2. Chile shall recognize "Rakı" as a Turkish geographical indication for spirits, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Chile shall not permit the sale of any product as "Rakı", unless it has been manufactured in Turkey, according to the laws of Turkey governing the manufacture of "Rakı".

## **Title IV. Cooperation**

### **Article 37. Cooperation**

1. The Parties agree to establish a framework for cooperative activities as a means to expand and enhance the benefits of this Agreement and to build a strategic economic partnership.

2. Cooperation between the Parties should contribute to achieving the objectives of this Agreement through the identification and development of innovative cooperation initiatives capable of providing added value to the bilateral relationship.

3. Without prejudice to the provisions of the "Agreement on Trade and Economic, Technical and Scientific Cooperation between the Government of the Republic of Turkey and the Government of the Republic of Chile", areas of cooperation may include but should not be limited to innovation, research and development, agriculture, food production and processing, air transport, mining, energy, environment, small and medium size enterprises, tourism, gender issues, education, labor and employment matters, human capital development and cultural collaboration.

4. Cooperation between the Parties under this Title will complement the cooperation referred to in other Titles of this Agreement.

5. The Parties will establish close cooperation aimed inter alia at:

a) strengthening and building on existing cooperative relationships;

b) creating new opportunities for trade and investment, and for promoting competitiveness, fostering innovation and encouraging research and development;

c) supporting the role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development; and

d) increasing the level of and further developing cooperation activities between the Parties in areas of mutual interest.

6. Cooperative activities will be agreed between the Parties and may include, but should not be limited to exchange of people and information; cooperation in regional and multilateral fora; dialogues, conferences and seminars; the development of joint research programs; and the encouragement of private sector cooperation.

7. The objectives of both Parties in Labor Cooperation will be to promote decent work, sound labor policies and practices of each Party's labor systems, improve the capacities and capabilities of the Parties and the development and management of human capital for enhanced employability, business excellence and greater productivity for the benefit of workers and employers, in the context of strengthening trade and investment relations between them.

The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). Each Party shall strive to ensure that the principles embodied in such declaration and the internationally recognized labor rights are included and protected by its domestic laws and agree to cooperate on labor and employment matters of mutual interest and benefit, through jointly decided activities which may refer, among others, to:

- a) decent work, including its dimensions of employment, labor standards, social protection and social dialogue;
- b) compliance and enforcement systems and management of labor disputes; and
- c) employment systems, human capital development, training and employability. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, a Party shall not fail to effectively enforce its labor laws, in a manner affecting trade between the Parties.

8. The Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations between them.

The Parties reaffirm their intention to continue to pursue environmental protection, and to fulfill their respective multilateral environment commitments.

The Parties endeavor to have their environment laws, regulations, policies and practices in harmony with their international environment commitments; agree that it is inappropriate to set or use their environmental laws, regulations, policies and practices for trade protectionist purposes; as well as it is inappropriate to relax, or fail to enforce or administer, their environment laws and regulations to encourage trade and investment.

The Parties agree to cooperate in the field of the environment. The aim of cooperation will be the prevention and/or reduction of contamination and degradation of natural resources and ecosystems, and rational use of the latter; through developing and endorsing special programs and projects dealing, inter alia, with the transfer of knowledge and technology.

Cooperation on environment may include, but should not be limited to:

- a) climate change;
- b) biodiversity and conservation of natural resources;
- c) management of hazardous chemicals;
- d) air quality;
- e) water management;
- f) waste management;
- g) marine and coastal ecological conservation and pollution control;
- h) strategic environmental impact assessment;
- i) improvement of environmental awareness, including environmental education and public participation.

9. New areas of cooperation may be developed through existing agreements and through appropriate implementing arrangements.

10. For the purposes of this Title, the Joint Committee may decide to establish sub-committees or working groups.

11. Communications regarding the implementation of this Title shall be distributed through the contact points designated by each Party before the first meeting of the Joint Committee.

## **Title V. Dispute Settlement**

### **Article 38. Scope and Coverage**

Unless otherwise provided for in this Agreement, this Title shall apply with respect to the avoidance or settlement of disputes between the Parties concerning the interpretation and implementation of this Agreement, when a Party considers that:

- a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

b) the other Party has otherwise failed to carry out its obligations under this Agreement.

## **Article 39. Choice of Dispute Settlement Procedure**

1. Where a dispute regarding any matter arises under this Agreement and the WTO Agreement, the complaining Party may select the dispute settlement procedure 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 other.

## **Article 40. Consultations**

1. The Parties shall at all times endeavor to agree on the interpretation and implementation of this Agreement and shall make every attempt through cooperation and consultations to avoid and settle disputes between them and to arrive at a mutually satisfactory resolution of any matter that might affect its operation.
2. Each Party may request consultations within the Joint Committee with respect to an existing or proposed measure or any matter relating to the interpretation and implementation of this Agreement.
3. The requesting Party shall deliver written notification to the other Party, stating the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter.
4. The Joint Committee shall convene within 30 days after the date of receipt of the request. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure or any other matter might affect the interpretation and implementation of this Agreement, and give confidential treatment to the information exchanged during consultations.
5. The Joint Committee shall endeavor to resolve the dispute promptly by means of a decision and may make recommendations regarding the implementing measures to be taken by the Party concerned, and the timeframe for doing so.
6. The Joint Committee may call on technical advisers or create working groups or expert groups as it deems necessary in order to assist the Parties to reach a mutually satisfactory resolution of the dispute. The Parties may agree to suspend further proceedings provided in the following articles during the activities envisaged in this paragraph.
7. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

## **Article 41. Establishment of Arbitration Panels**

1. The Parties shall at all times endeavor to reach a mutually satisfactory agreement on the dispute.
2. If a matter, unless otherwise mutually agreed, has not been resolved within 15 days after the Joint Committee has convened pursuant to paragraph 4 of Article 40 or 45 days after the date of receipt of the request for consultations within the Joint Committee, whichever is earlier, the complaining party may request in writing the establishment of an arbitration panel.
3. Pursuant to this Article, the complaining Party shall identify in the request for the establishment of an arbitration panel, the specific measure at issue, the legal basis of the complaint including any provision of this Agreement alleged to have been breached and any other relevant provisions, the factual basis for the complaint, and shall deliver the request to the other Party.
4. The establishment of an arbitration panel shall not be requested on any matter relating to a proposed measure.
5. The date of establishment of an arbitration panel shall be the date on which the chair is appointed.

## **Article 42. Terms of Reference of Arbitration Panels**

Unless the Parties otherwise agree, within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 41, to make findings together with the reasons on whether the measure is in conformity with the Agreement or not and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute."

## **Article 43. Composition of Arbitration Panels**

1. Arbitration panels shall consist of three arbitrators.
2. Each Party shall appoint one arbitrator, who may be its national, within 30 days from the date of receipt of the request for the establishment of the arbitration panel. The Parties shall agree on and appoint the third arbitrator, who shall be the chair of the arbitration panel, within 45 days after the date of receipt of the request for the establishment of the arbitration panel, taking into account the list established pursuant to paragraph 3. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the third arbitrator shall be chosen within seven days by lot from the list established pursuant to paragraph 3.
3. The Joint Committee shall, in its first meeting, establish a list of 10 individuals who are willing and able to serve as third arbitrator. In establishing the list the Parties will take into consideration the indicative list of governmental and non-governmental arbitrators, established by the WTO. The Joint Committee shall ensure that the list always contains 10 individuals at any point in time. These individuals shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.
4. All arbitrators shall have specialized knowledge or experience in law, international trade or other matters relating to this Agreement or in the resolution of disputes deriving from international trade agreements, be independent, serve in their individual capacities and not be affiliated with, nor take instructions from, any Party or organization and shall comply with the Code of Conduct, which will be adopted by the Joint Committee upon the entry into force of this Agreement.
5. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if so agreed, they shall replace that arbitrator in accordance with paragraph 6.
6. If an arbitrator appointed under this Article becomes unable to participate in the proceeding or resigns, or is to be replaced according to paragraph 5; a successor shall be selected within 10 days in accordance with the selection procedure followed to select that arbitrator. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator becomes unable to participate in the proceeding or resigns. The work of the arbitration panel shall resume on the date the successor is appointed.

## **Article 44. Proceedings of Arbitration Panels**

1. Panel meetings shall be closed to the public, unless the Parties decide otherwise.
2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitration panel, including any comments on the draft report and responses to questions put by the arbitration panel, shall be made available to the other Party.
3. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.
4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.
5. The arbitration panel shall aim to make its decisions, including its report, by consensus but may also make its decisions, including its report, by majority vote.
6. At the request of a Party or on its own initiative and subject to such terms and conditions as the Parties may agree within 10 days, the arbitration panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.
7. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.
8. Notwithstanding paragraph 7, either Party may make public statements as to its views regarding the dispute, but shall

treat as confidential, information and written submissions submitted by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 30 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

9. Each Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chair of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares. The costs and expenses of the arbitrators shall normally conform to the WTO standards.

## **Article 45. Suspension or Termination of Proceedings**

1. The Parties may agree that the arbitration panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time-frames regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If in any case, the suspension of the work of the arbitration panel exceeds 12 months, the authority for the establishment of the arbitration panel shall lapse unless the Parties agree otherwise. This shall not prejudice to the rights of the complaining party to request at a later stage, the establishment of an arbitration panel on the same subject matter.

2. The Parties may agree to terminate the proceedings of the arbitration panel by jointly so notifying the chair of the arbitration panel at any time before the issuance of the report to the Parties.

## **Article 46. Arbitration Panel Report**

1. The report of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.

2. The arbitration panel shall submit its report containing its findings and conclusions to the Parties, as a general rule not later than three months from the date of establishment of the arbitration panel. If the arbitration panel cannot submit its report within this period, it may extend that period to a maximum of five months from the date of establishment of the arbitration panel.

3. Arbitration panels shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, due account being taken of the fact that the Parties must perform this Agreement in good faith and avoid circumvention of their obligations.

4. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its report to the Parties within 75 days from the date of establishment of the arbitration panel. In no case should it do so later than four months from that date. The arbitration panel may give a preliminary report on whether a case is urgent.

5. The report of the arbitration panel shall be final and binding on the Parties.

6. The report shall contain both the descriptive part summarizing the submissions and arguments of the Parties and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute in its report. The findings and determinations of the arbitration panel and, if applicable, any recommendations cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.

## **Article 47. Implementation of the Report**

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity as determined in the report of the arbitration panel, immediately, or if this is not practicable, within a reasonable period of time.

2. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the report of the arbitration panel referred to in Article 46, either Party may refer the matter to an arbitration panel, which shall determine the reasonable period of time.

3. The Party complained against shall notify to the complaining Party the implementing measures adopted in order to put an end to the violation of its obligations under this Agreement, before the expiry of the reasonable period of time agreed by the Parties or determined in accordance with paragraph 2. Where there is disagreement between the Parties as to whether the Party complained against eliminated the non-conformity as determined in the report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 2, either Party may refer the matter to an arbitration panel

as provided for in Article 48.

## **Article 48. Non-implementation, Compensation and Suspension of Concessions or other Obligations**

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies the complaining Party that it is impracticable, or the arbitration panel to which the matter is referred pursuant to paragraph 3 of Article 47 rules that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching mutually satisfactory compensation.
2. If there is no agreement on satisfactory compensation within 20 days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance. Such notification may only be given 20 days after the date of receipt of the request mentioned in paragraph 1.
3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.
4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:
  - a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the report of the arbitration panel referred to in Article 46 has found a failure to comply with the obligations under this Agreement; and
  - b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based. In the selection of the benefits to suspend, the Parties will take into consideration those which least disturb the functioning of this Agreement.
5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.
6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraphs 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitration panel. Concessions or other obligations shall not be suspended until the arbitration panel has its ruling.
7. The arbitration panel that is established for the purposes of this Article or Article 47 shall have, wherever possible, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators to the arbitration panel that is established for the purposes of this Article or Article 47 shall be appointed pursuant to Article 43. The arbitration panel established under this Article or Article 47 shall submit its report to the Parties within 60 days after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned 60 day period, it may extend that period for a maximum of 30 days with the consent of the Parties. The report shall be final and binding on the Parties.

## **Article 49. Rules of Procedure**

The Joint Committee shall adopt the Rules of Procedure which provide for the details of the rules and procedures of arbitration panels established under this Title, upon the entry into force of this Agreement. Unless the Parties otherwise agree, the arbitration panel shall follow the rules of procedure adopted by the Joint Committee and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the rules adopted by the Joint Committee.

## **Article 50. Application and Modification of Rules and Procedures**

Any time period or other rules and procedures for arbitration panels provided for in this Title, including the Rules of Procedure referred to in Article 49, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Title.

## **Title VI. Transparency, Institutional Provisions, Exceptions and Final Provisions**

# Chapter I. TRANSPARENCY

## Article 51. Contact Points and Exchange of Information

1. In order to facilitate communication between the Parties on any trade matter covered by this Agreement, the Parties hereby establish the following contact points: a) for the Republic of Turkey: Prime Ministry, Undersecretariat for Foreign Trade, or its successor; and b) for the Republic of Chile: the Europe Department of the General Directorate of International Economic Affairs, or its successor.

2. On the request of either Party, the contact point of the other Party shall indicate the office or official responsible for the matter and provide the required support to facilitate communication with the requesting Party. Each Party shall notify the other Party of any changes of its contact point in due time.

3. On request of the other Party, and to the extent possible under its domestic laws and regulations, each Party shall provide information and reply to any question from the other Party relating to an actual or proposed measure that might substantially affect the operation of this Agreement.

4. The information referred to under this Article shall be considered to have been provided when the information has been made available by appropriate notification to the WTO or when the information has been made available on the official, publicly and fee-free accessible website of the Party concerned.

## Article 52. Cooperation on Increased Transparency

The Parties agree to cooperate in bilateral and multilateral fora on ways to increase transparency in trade matters.

## Article 53. Publication

Each Party shall ensure that its laws and regulations relating to any trade matter covered by this Agreement are published or made publicly available.

# Chapter II. INSTITUTIONAL PROVISIONS

## Article 54. Establishment of the Joint Committee

1. A Joint Committee is hereby established in which each Party shall be represented by its senior officials. The Joint Committee shall be responsible for the administration of this Agreement and shall ensure its proper implementation.

2. For the objective of the proper implementation of this Agreement, the Joint Committee shall work in pursuant with the following purposes; included but not limited to:

a) review the general functioning of this Agreement;

b) set up sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks;

c) review, consider and, as appropriate, decide on specific matters related to the operation and implementation of this Agreement, including matters reported by sub-committees or working groups;

d) supervise the work of sub-committees, working groups and contact points established under this Agreement;

e) facilitate, as appropriate, the avoidance and settlement of disputes arising under this Agreement, including through consultations pursuant to Article 40;

f) consider and adopt any amendment to this Agreement or other modification or rectification to the commitments therein. The Parties shall implement any amendment or other modification approved by the Joint Committee subject to the completion of the following procedures:

i. In the case of Chile, through Executive Agreements (Acuerdos de Ejecución), in accordance with the Political Constitution of the Republic of Chile (Constitución Política de la República de Chile).

ii. In the case of Turkey, in accordance with the applicable internal procedures. g) as appropriate, issue interpretations of the Agreement;

- h) review the possibility of further removal of the obstacles to trade between the Parties and the further development of the trade relationship;
- i) explore ways to enhance further trade and investment between the Parties and to further the objectives of this Agreement; and
- j) take such other actions as the Parties may agree.

## **Article 55. Procedures of the Joint Committee**

1. The Joint Committee shall meet whenever necessary upon request but normally at least once a year. Either Party may request a meeting to be held.
2. All decisions of the Joint Committee shall be taken by mutual agreement.
3. The Joint Committee shall adopt its rules of procedure.

## **Chapter III. EXCEPTIONS**

### **Article 56. General Exceptions**

For the purpose of this Agreement, Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

### **Article 57. Security Exceptions**

1. Nothing in this Agreement shall be construed:
  - a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
  - b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests
    - i. relating to fissionable materials or the materials from which they are derived;
    - ii. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, as is carried on directly or indirectly for the purpose of supplying a military establishment;
    - iii. taken in time of war or other emergency in international relations; or
  - c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. A Party taking action under sub-paragraphs (b) and (c) of paragraph 1, shall inform the Joint Committee to the fullest extent possible of measures taken and of their termination.

### **Article 58. 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 Party's rights and obligations under GATT 1994, including the Declaration on Trade Measures Taken for Balance of Payments Purposes (1979 Declarations) 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 Party.

### **Article 59. Taxation**

1. For the purposes of this Article, "tax convention" means a convention for the avoidance of double taxation or other international taxation agreement or arrangement in force between the Parties; and taxation measures do not include a "customs duty" as defined in Article 8.
2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.
3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article III of GATT 1994.



4. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and such tax convention, the latter shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

## **Article 60. Disclosure of Information**

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

2. Nothing in this Agreement shall be construed as requiring 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.

## **Chapter IV. FINAL PROVISIONS**

### **Article 61. Evolutionary Clause**

1. The Parties may mutually agree to extend this Agreement with the aim of broadening and supplementing its scope in accordance with their respective legislation, by concluding agreements on specific sectors or activities in the light of the experience gained during its implementation.

2. Unless otherwise agreed, no later than two years after the entry into force of this Agreement, the Parties will commence exploratory talks on trade in services and investment.

### **Article 62. Annexes**

Annexes to this Agreement shall form an integral part thereof.

### **Article 63. Amendments**

1. The Parties may agree, in writing, on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the necessary domestic legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement. Such amendment shall enter into force on the first day of the second month following the date on which the Parties exchange written notification that such procedures have been completed, or after such other period as the Parties may agree.

### **Article 64. Entry Into Force**

1. The Parties shall ratify this Agreement in accordance with their domestic legal procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties exchange written notification that such procedures have been completed.

### **Article 65. Duration and Termination**

1. This Agreement shall be valid indefinitely.

2. Either Party may give written notice to the other of its intention to denounce this Agreement. Denunciation shall take effect on the first day of the seventh month after notification to the other Party.

### **Article 66. Authentic Texts**

This Agreement shall be done in English, Spanish, and Turkish languages, all being equally authentic. In case of divergence, the English text shall prevail.

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

DONE at Santiago, Republic of Chile, in two originals, this fourteenth day of July two thousand and nine.

For the Republic of Turkey

For the Republic of Chile