Australia-Chile Free Trade Agreement

PREAMBLE

The Government of Australia and the Government of the Republic of Chile ("the Parties"), resolved to:

REINFORCE the special bonds of friendship and cooperation between them;

STRENGTHEN their economic relations and further liberalise and expand bilateral trade and investment;

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

ESTABLISH clear and mutually advantageous rules governing their trade and reduce the barriers to trade that exist between them;

ENCOURAGE a closer economic partnership that will bring economic and social benefits, create new employment opportunities, and improve living standards for their people;

PROMOTE a predictable, transparent, and consistent business environment that will assist enterprises to plan effectively and use resources efficiently;

FOSTER creativity and innovation and promote stronger links between dynamic sectors of their economies;

IMPLEMENT this Agreement in a manner consistent with sustainable development and environmental protection and conservation;

BUILD on their respective rights and obligations under the WTO Agreement, other agreements to which they are both parties, and their commitment to open trade, investment and economic reform in the Asia-Pacific Economic Cooperation (APEC) forum;

HAVE AGREED as follows:

Chapter 1. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

The Parties, 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. Relation to other Agreements

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

Chapter 2. General Definitions

Article 2.1. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

(a) **central level of government** means:

(i) for Australia, the Commonwealth government; and

(ii) for Chile, the national level of government;

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

(c) **Customs Administration** means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) **customs duty** includes any 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:

(i) 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;

(ii) safeguard duties applied in accordance with Article XIX of GATT 1994 and the Safeguards Agreement;

(iii) antidumping or countervailing duty; and

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

(e) **days** means calendar days, including weekends and holidays;

(f) **enterprise** means any entity constituted or organised 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;

(g) **enterprise of a Party** means an enterprise constituted or organised under the law of a Party;

(h) **existing** means in effect on the date of entry into force of this Agreement;

(i) **GATS** means the General Agreement on Trade in Services, contained in Annex 1B of the WTO Agreement;

(j) **GATT 1994** means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A of the WTO Agreement;

(k) **goods of a Party** means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

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

(m) **Harmonized System (HS)** means the Harmonized Commodity Description and Coding System governed by "The International Convention on the Harmonized Commodity Description and Coding System", including its General Rules of Interpretation, Section Notes, and Chapter Notes, and their amendments, as adopted and implemented by the Parties in their respective tariff laws;

(n) **heading** means the first four digits in the tariff classification number under the Harmonized System;

(o) **investor of a Party** means a Party or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other 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/her dominant and effective nationality (2-1);

(p) **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;

(q) **national** means a natural person who has the nationality of a Party according to Annex 2-A;

(r) **originating good** means a good qualifying under the rules of origin set out in Chapter 4 (Rules of Origin);

(s) **person** means a natural person or an enterprise;

(t) **person of a Party** means a national or an enterprise of a Party;

(u) **publish** includes publication in written form or on the Internet;

(v) **regional level of government** means, for Australia, a state of Australia, the Australian Capital Territory, or the Northern

Territory. For Chile, as a unitary state, "regional level of government" is not applicable;

(w) **Safeguards Agreement** means the Agreement on Safeguards, contained in Annex 1A of the WTO Agreement;

(x) **SPS Agreement** means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A of the WTO Agreement;

(y) **state enterprise** means an enterprise wholly or majority owned or controlled by a Party for the purposes of carrying on business activity;

(z) **subheading** means the first six digits in the tariff classification number under the Harmonized System;

(aa) **territory** means for a Party the territory of that Party as set out in Annex 2-A;

(bb) **TBT Agreement** means the Agreement on Technical Barriers to Trade, contained in Annex 1A of the WTO Agreement;

(cc) **TRIPS Agreement** means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C of the WTO Agreement;

(dd) **WTO** means the World Trade Organization, and

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

(2-1) For greater certainty, the Parties understand that "investor of a Party" includes a state enterprise.

Annex 2-a. Country-specific definitions

For the purposes of this Agreement, unless otherwise specified:

1. **natural person who has the nationality of a Party** means:

(a) with respect to Australia, an Australian citizen as defined in the Australian Citizenship Act 2007, ot a permanent resident of Australia as defined in the Migration Regulations 1994; and

(b) with respect to Chile, a chileno (a) as defined in Constitución Política de la República de Chile or a permanent resident of Chile; and

2. **territory** means:

(a) with respect to Australia, the territory of the Commonwealth of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and

(b) with respect to Chile, 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.

Chapter 3. National Treatment and Market Access for Goods

Section A. Definitions

Article 3.1. Definitions

For the purposes of this Chapter:

(a) **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, and provided that they are imported in packets that each contain no

more than one copy of each film or recording and that do not form part of a larger consignment;

(b) **Agriculture Agreement** means the Agreement on Agriculture, contained in Annex 1A of the WTO Agreement;

(c) **agricultural goods** means those goods referred to in Article 2 of the Agriculture Agreement;

(d) **commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped:

(i) with respect to Chile, of not more than one U.S. dollar or the equivalent amount in Chilean currency; and

(ii) with respect to Australia, of not more than one Australian dollar; or

commercial examples so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

(e) **consular transactions** means requirements that goods of a Party intended for export to the territory of the other 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, shippers' export declarations, or any other customs documentation required on or in connection with importation;

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

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

(h) **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;

(i) **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;

(j) **performance requirement** means a requirement that:

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

(ii) goods or services of the Party granting an import licence be substituted for imported goods or services;

(iii) a person benefiting from an import licence purchase other goods or services in the territory of the Party granting the import licence, or accord a preference to domestically produced goods or services;

(iv) a person benefiting from an import licence produce goods or supply services, in the territory of the Party granting the import licence, with a given level or percentage of domestic content; or

(v) 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;

k) **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, publicise, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

Article 3.2. Scope and Coverage

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

Section B. National Treatment

Article 3.3. National Treatment

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

Section C. Tariff Elimination

Article 3.4. Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any 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 its Schedule in Annex 3-B.

3. If a Party reduces its applied most-favoured-nation import duty rate after the entry into force of this Agreement and before the end of the tariff elimination period, the tariff elimination schedule of that Party shall apply to the reduced rate.

4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules in Annex 3-B. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules in Annex 3-B for such good following discussion by the Committee on Trade in Goods and when approved by each Party in accordance with Article 20.1.3(e) Joint FTA Committee — Institutional Arrangements Chapter).

5. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 3-B. A Party considering this shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

Article 3.5. Customs Valuation

The Parties shall apply the provisions of Article VII of GATT 1994 and the WTO Agreement on the Implementation of Article VII of GATT 1994 for the purposes of determining the customs value of goods traded between the Parties.

Section D. Special Regimes

Article 3.6. Temporary Admission of Goods

1. Each Party shall grant customs duty-free temporary admission (3-1) for the following goods, regardless of their origin, for the use solely by or under the personal supervision of a national or resident of the other Party:

(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 at exhibitions, fairs or similar events;

(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 deemed valid by its Customs Administration, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the customs duty-free temporary admission of goods referred to in paragraph 1, other than to require that such goods:

(a) be used by a person 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 taken out of the territory of the other Party (3-2),

(e) be taken out from the territory of the other Party on or before 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;

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

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

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 domestic law.

5. Each Party, through its Customs Administration, 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 the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident subject to necessary documentation required by the customs authorities of the admitting Party.

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, through its Customs Administration, consistent with domestic law, 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 customs authorities that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapter 9 (Cross-Border Trade in Services) and Chapter 10 (investment):

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

(b) neither 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 container;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

(3-1) Temporary admission equates to importation under Australia's Customs Act 1901.

(3-2) Taken out from the territory of the other Party equates to exportation under Australia's Customs Act 1901.

Article 3.7. Goods Re-entered after Repair or Alteration

1. Neither 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 the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

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

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

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

Article 3.8. Customs Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant customs duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other 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 the other Party ora 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 E. Non-tariff Measures

Article 3.9. Import and Export Restrictions

1. 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 GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, mutatis mutandis.

2. The Parties understand that the rights and obligations in 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 orders and undertakings;

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

(c) voluntary export restraints.

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

4. Each Party shall ensure the transparency of any non-tariff measures permitted in paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

Article 3.10. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of 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.

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

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

Article 3.11. Export Taxes

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

Article 3.12. Treatment of Certain Spirits

1. Australia confirms that the Australia New Zealand Food Standards Code ("the Code") allows recognition of Chilean Pisco as a product exclusively manufactured in Chile and that no variation to the Code is necessary for such recognition.

2. To the extent contemplated in the Code, Australia shall not permit the sale of any product as Chilean Pisco unless it has been manufactured in Chile according to the laws of Chile governing the manufacture of Chilean Pisco and complies with all applicable Chilean regulations for the consumption, sale, or export as Chilean Pisco.

Section F. Agriculture

Article 3.13. 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. Neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

Section G. Other Measures

Article 3.14. Administration of Trade Regulations

In accordance with Article X of GATT 1994, each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings pertaining to:

(a) the classification or the valuation of products for customs purposes;

(b) rates of duty, taxes or other charges;

(c) requirements, restrictions or prohibitions on imports or exports;

(d) the transfer of payments; and

(e) issues affecting sale, distribution, transportation, insurance,

warehousing, inspection, exhibition, processing, mixing or other use of products for customs purposes.

Section H. Institutional Provisions

Article 3.15. 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 at the request of either Party or the Joint FTA Committee to consider any matter arising under this Chapter, Chapter 4 (Rules of Origin) or Chapter 5 (Customs Administration).

3. The Committee shall meet at such venues and times as may be agreed by the Parties. Meetings may be held via teleconference, videoconference or through any other means as mutually determined by the Parties.

4. 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; and

(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 Joint FTA Committee for its consideration.

Annex 3-A. Exceptions to elimination of import and export restrictions

Paragraphs 1 and 2 of Article 3.9 shall not apply to:

(a) with respect to Australia:

(i) control by Australia on the exports of woodchips and unprocessed forest products (e.g., whole logs) sourced from native forests outside Regional Forest Agreement regions, or plantation forests within States where Codes of Practice have not been approved by the Australian Government, and Sandalwood (Santalum spicatum) sourced from any State, the Australian Capital Territory, or the Northern Territory; and

(ii) the provisions of and measures under the Livestock Export (Merino) Orders, made under the Export Control Act of 1982, as amended.

(b) with respect to Chile, measures concerning the importation of used vehicles as provided in Law No 18.483 or its successor.

Annex 3-B. Elimination of customs duties

Section 1. Schedule of Australia

Customs Duties on Goods Originating in Chile

Introductory notes

I. Australia's tariff schedule in this Annex contains the following five columns:

(a) **Code**: the code used in the nomenclature of the Harmonized System 2007;

(b) **Description**: the description of the product falling under the heading;

(c) **Base Rate**: the basic customs duty from which the tariff elimination program starts; and

(d) **Category**: the category under which the product concerned falls for the purposes of tariff elimination.

II. The categories which are applicable to imports into Australia from Chile are the following:

1) **Year 0**: customs duties shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

	Entry into force
Margin of preference	100%

2) **Year 6:** customs duties shall be removed in seven equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	14.3%	28.6%	42.9%	57.2%	71.5%	85.8%	100%

3) **Year 6 TX**: customs duties shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	0%	0%	0%	0%	0%	0%	100%

Note: Under existing law, Australia's most-favoured-nation rates for some textiles, clothing and footwear products are scheduled to be reduced on 1 January 2010.

Section 2. Schedule of Chile

Customs Duties on Goods Originating in Australia

Introductory notes

I. Chile's tariff schedule in this Annex contains the following five columns:

(a) **Code**: the code used in the nomenclature of the Harmonized System 2007;

(b) **Description**: the description of the product falling under the heading;

(c) **Base Rate**: the basic customs duty from which the tariff elimination program starts;

(d) **Category**: the category under which the product concerned falls for the purposes of tariff elimination; and

(e) **Observation**: additional information if it corresponds.

II. The categories which are applicable to imports into Chile from Australia are the following:

1) **Year 0:** customs duties shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

	Entry into force
Margin of preference	100%

2) **Year 6**: customs duties shall be removed in seven equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	14,3%	28,6%	42,9%	57,2%	71,5%	85,8%	100%

3) **Year 6 TX**: customs duties shall be duty-free, effective 1 January 2015.

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	0%	0%	0%	0%	0%	0%	100%

4) **Category W**: duties on goods provided for in the items in staging category W shall be reduced by 16,7 per cent of the base rate on 1 January of entry into force, and by an additional 8,3 per cent of the base rate each year thereafter through year three. Beginning 1 January of year four, duties on these goods shall be reduced by an additional 16,7 per cent of the base rate annually through year eight and shall be duty-free effective 1 January 2015; and

	Entry into force	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015
Margin of preference	16,7%	25%	33,3%	50%	66,7%	83,3%	100%

5) **Sugar Category**: the ad-valorem duty (6 per cent) will be charged in accordance with the following schedule:

Date	Ad-valorem duty to be charged
01/01/2009	3,00%
01/01/2010	1,98%
01/01/2011	1,02%

01/01/2012	0,00%

For greater certainty it is understood that this phase out schedule is only applicable to the ad-valorem duty (6 per cent) imposed by Chile to other countries for the following tariff lines (1701.11.00, 1701.12.00, 1701.91.00, 1707.99.10, 1701.99.20, and 1701.99.90)

The specific tariff will continue to apply for the products considered under Law No. 18.525 or its successor.

Chapter 4. Rules of Origin

Article 4.1. Definitions

For the purposes of this Chapter:

(a) **adjusted value** means:

(i) in the case of a good to be exported from one Party to another, the value determined under the Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the good from the country of exportation to the place of importation;

(ii) in the case of a material, the total of all prices actually paid or payable to acquire the materials to which the transaction relates in accordance with the Customs Valuation Agreement;

(b) **Customs Valuation Agreement** means the Agreement on Implementation of Article VU of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A of the WTO Agreement;

(c) **exporter** means a person who exports goods from the exporting Party;

(d) **fungible goods or materials** means goods or materials that are identical or interchangeable as result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

(e) **generally accepted accounting principles** means the recognised consensus or substantial authoritative support 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. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

(f) **importer** means a person who imports goods into the importing Party;

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

(i) fuel and energy;

(ii) tools, dyes and moulds;

(ii) spare parts and materials;

(iv) lubricants, greases, compounding materials and other materials used in production;

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

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

(vii) catalysts and solvents; and

(viii) any other materials 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;

(h) **material** means any good, used or consumed in the production of another good, and physically incorporated into or classified with that good;

(i) **originating** material means a material that qualifies as originating in accordance with the relevant provisions of this

Chapter;

(j) **preferential tariff treatment** means the rate of customs duties applicable to an originating good of the exporting Party in accordance with Annex 3-B; and

(k) **producer** means a person who engages in the production of goods or materials.

Article 4.2. Originating Goods

For the purposes of this Agreement, a good is an originating good of a Party and, subject to Article 4.18, eligible for a preferential tariff, if it:

(a) is a wholly obtained good of a Party;

(b) is produced entirely in the territory of a Party exclusively from originating materials;

(c) satisfies all applicable requirements of Annex 4-C, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers; or

(d) otherwise qualifies as an originating good under this Chapter;

and meets all other applicable requirements of this Chapter.

Article 4.3. Wholly Obtained Goods

For the purposes of Article 4.2, a wholly obtained good of a Party means:

(a) mineral and other naturally occurring goods extracted in or from the territory of a Party;

(b) vegetable goods (4-3), as such goods are defined in the Harmonized System, harvested, picked or gathered in the territory of a Party;

(c) live animals born and raised in the territory of a Party; (d) goods obtained from live animals in the territory of a Party;

(e) goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of a Party;

(f) goods (fish, shellfish and other marine life) taken from the high seas by vessels registered or recorded with a Party and flying its flag;

(g) goods obtained or produced on board factory ships registered or recorded with a Party and flying its flag, from the goods referred to in subparagraph (f);

(h) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside the territorial sea, provided that a Party has a right to exploit such seabed in accordance with international law;

(i) waste and scrap derived from:

(i) production in the territory of a Party; or

(ii) used goods collected in the territory of a Party;

provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced or obtained entirely in the territory of a Party exclusively from goods referred to in subparagraphs (a) to (i).

(4-3) The definition of "vegetable products" in the Harmonized Commodity Description and Coding System shall apply as the definition of "vegetable goods" for the purposes of this Chapter.

Article 4.4. Cumulation

A good which is an originating good of a Party pursuant to Article 4.2 and is used in the production of a good or goods in the territory of the other Party shall be considered to originate in the territory of that other Party.

Article 4.5. De Minimis

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 4-C is nonetheless an originating good if:

(a) the value of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 per cent of the adjusted value of the good (as calculated in accordance with Article 4.12); and

(b) the good meets all other applicable criteria of this Chapter.

2. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

Article 4.6. Accessories, Spare Parts and Tools

1. For the purposes of determining the origin of a good, accessories, spare parts, tools and instructional or other information resources presented with the good shall be considered originating goods, and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification or production process requirement.

2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information resources presented with the good is to be taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

3. Paragraph 1 and 2 shall only apply provided that:

(a) the accessories, spare parts, tools and instructional or other information resources presented with the good are not invoiced separately from the good; and

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

4. Where accessories, spare parts and tools are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of origin determination.

Article 4.7. Fungible Goods and Materials

1. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party.

2. A Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout its fiscal year.

Article 4.8. Packaging Materials and Containers

1. Packaging materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packaging materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification or production process requirements as set out in Annex 4-C.

3. If a good is subject to a regional value content requirement then the value of the packaging materials in which the good is packaged for retail sale 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.

4. Where the quantity or value of the packaging materials is not reasonable for the good, its value shall not be included as originating in a regional value content calculation for the good.

Article 4.9. Sets or Composite Goods

1. A set put up for retail sale or composite good that is classifiable pursuant to Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating, provided that: (a) all the component goods are originating; or (b) the value of the non-originating component goods does not exceed 25 per cent of the total adjusted value (as calculated in accordance with Article 4.12) of the good put up in a set for retail sale or composite good.

2. The origin of packaging materials and containers for a set put up for retail sale or composite good shall be determined in accordance with Article 4.8.

3. This Article shall not apply to a set put up for retail sale or composite good for which the Harmonized System provides a specific description.

Article 4.10. Indirect Material

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

Article 4.11. Regional Value Content

For the purposes of Article 4.2 where Annex 4-C requires a good to meet a regional value content requirement, the regional value content of that good shall be calculated using the following method:

Build-down = Method AV -VNM x 100

RVC. AV

where:

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

AV is the adjusted value as defined in Article 4.1(a), and

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

Article 4.12. Calculation of the Value of Non-originating Material

1. Each Party shall provide that the value of a non-originating material is:

(a) for a material imported by the producer of the good, the adjusted value of the material, adjusted by deducting the following costs and expenses:

(i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within the Party's territory to the location of the producer;

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

(iii) if the good is imported from the other Party, the cost of waste and spoilage resulting from the use of the material in the production of the good in the territory of that Party;

(iv) if the good is imported from the other Party, the cost of processing incurred in the territory of that Party in the production of the non-originating material;

(v) if the good is imported from the other Party, the cost of originating materials used or consumed in the production of the non-originating material in the territory of that Party; and

(b) for a material acquired in the territory where the good is produced, the adjusted value of the material, adjusted by deducting the following costs and expenses:

(i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within the Party's territory to the location of the producer;

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

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good in the territory of the Party;

(iv) the cost of processing incurred in the territory of the Party in the production of the non-originating material; and

(v) the cost of originating materials used or consumed in the production of the non-originating material in the territory of the Party.

Where the cost or expense of a deduction listed in paragraph 1(a) or 1(b) is unknown or documentary evidence of the amount of the deduction is not available, then no deduction is allowable for that particular cost.

Article 4.13. Non-qualifying Operations

1. A good shall not be considered to be an originating good of the exporting Party merely by reason of:

(a) operations to ensure the preservation of products in good condition for the purpose of storage during transport;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations; (e) mere making-up of sets of articles; or

(f) any combination of operations referred to in subparagraphs (a) to (e).

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 4-C.

Article 4.14. Recording of Costs

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced or manufactured.

Article 4.15. Third Country Transhipment

1. A good shall continue to be considered an originating good provided that the good undergoes no subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, storing, repacking, relabelling or any other necessary operations to preserve it in good condition or to transport the good to the territory of a Party.

2. Notwithstanding paragraph 1, an originating good of a Party imported into the other Party after an exhibition in a non-Party shall continue to qualify as an originating good.

3. To ensure compliance with paragraphs 1 or 2, the Customs Administration of the importing Party may request documents, including customs documents of the third country, or any other documents, including transport documents.

Article 4.16. Certificate of Origin

1. A claim that a good should be treated as originating and accepted as eligible for a preferential tariff shall be supported by a Certificate of Origin.

2. The Certificate of Origin shall be completed by the exporter. The Certificate of Origin shall contain a set of minimum requirements as detailed in Annex 4-A and shall:

(a) specify that the goods enumerated therein are the origin of the exporting Party and meet the terms of this Chapter;

(b) be made in respect of one or more goods and may include a variety of goods; and

(c) be completed in English or Spanish.

3. An example of a Certificate of Origin in English and Spanish is provided in Annex 4-B.

4. The Certificate of Origin shall remain valid for a period of one year from the date the document was issued.

5. If the exporter is not the producer of the good referred to in the Certificate of Origin, that exporter may complete and sign the Certificate of Origin on the basis of:

(a) the exporter's knowledge that the good qualifies as an originating good; or

(b) a producer's written declaration or statement that the good qualifies as an originating good of a Party.

6. Nothing in paragraph 5(b) shall be construed to require a producer who is not

the exporter of the good to make a written declaration or statement that the good qualifies as an originating good of a Party.

Article 4.17. Exceptions from Certificate of Origin

Notwithstanding paragraph 1 of Article 4.16, the Customs Administration of the importing Party shall not require a Certificate of Origin from importers when:

(a) the total customs value of the originating goods does not exceed 1000 United States dollars or the equivalent amount in that Party's currency, or such higher amount as the Party may establish; or

(b) the Customs Administration of the importing Party has waived the requirement for evidence,

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Chapter.

Article 4.18. Claim for Preferential Tariff Treatment

1. Subject to Article 4.24, the Customs Administration of the importing Party shall grant preferential tariff treatment to a good imported into its territory from the other Party, provided that the importer:

(a) makes a Customs Import Declaration that the good qualifies as an originating good of the exporting Party;

(b) complies with Article 4.15; and

(c) submits the Certificate of Origin and, where appropriate, other evidence to substantiate the tariff preference claimed for the good upon request.

2. Where an importer has reason to believe that the Certificate of Origin contains incorrect information, the importer should promptly make a corrected declaration and pay any owed duties.

Article 4.19. Customs Duty Refund

If at the time of importation of a good the importer does not claim or is unable to claim preferential tariff treatment, the importer may within one year from the date of importation, or within a longer period if provided for by a Party in its domestic legislation, apply for a refund of any excess customs duty paid on production of:

(a) a Certificate of Origin and, where appropriate, other evidence that the good qualifies as an originating good; and

(b) other documentation relating to the importation of the good as the Customs Administration of the importing Party may require.

Article 4.20. Records

1. Each Party shall require that:

(a) an exporter or producer shall maintain, for five years from the date of the Certificate of Origin, all records relating to the origin of a good for which preferential tariff treatment is claimed in the importing Party, including the Certificate of Origin relevant to the good, or a copy thereof; and

(b) an importer claiming preferential tariff treatment shall maintain, for five years after the date of importation of a good, all records relating to the importation of the good, including the Certificate of Origin relevant to the good, or a copy thereof in accordance with the laws, regulations and practices of the relevant Party.

2. The records to be maintained pursuant to this Article and Article 4.21 shall include electronic records. Any such records in electronic form shall be maintained in accordance with the laws, regulations and practices of the relevant Party.

Article 4.21. Obligations Regarding Exportation

1. Where the exporter becomes aware that it has provided an erroneous or false Certificate of Origin or any other such erroneous or false evidence, the exporter shall endeavour to give notice as soon as possible to the Customs Administration of the importing and exporting Party, as well as the importer, of any change that would affect the accuracy or validity of a Certificate of Origin.

2. The exporter that has provided a Certificate of Origin shall provide a copy of this document to the exporting Party's Customs Administration upon request.

3. Each Party shall, to the extent permitted by its laws, regulations and practices, maintain penalties for false Certificates of Origin or documentation related to the origin of a good submitted to a Customs Administration by an exporter in its territory.

Article 4.22. Origin Verification

1. The Customs Administration of the importing Party may verify the eligibility of a good for preferential tariff treatment in accordance with its laws, regulations and practices.

2. If the Customs Administration of the importing Party has reasonable doubts as to the authenticity or accuracy of the information included in the Certificate of Origin it may:

(a) institute measures to establish the validity of the Certificate of Origin;

(b) issue written requests for information to the relevant importers of the good for which preferential tariff treatment was claimed; and

(c) issue written requests for information to the exporter in the exporting Party on the basis of a Certificate of Origin.

3. A request for information in accordance with subparagraph 2(c) shall not preclude the use of the verification method provided for in Article 4.23.

4. The Customs Administration of the importing Party shall complete any action to verify eligibility for preferential tariff treatment within 90 days from the commencement of such action, and make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within 30 days.

Article 4.23. Verification Visit

1. The Customs Administration of the importing Party may request the exporter to:

(a) permit the Customs Administration to visit the exporter's factory or premises;

(b) arrange a visit to the factory or premises of the producer, if the exporter is not the producer; and

(c) provide information relating to the origin of the good. 2. The Customs Administration of the importing Party shall issue a written communication with such a request to the exporter in advance of the proposed date of the visit. 3. The Customs Administration of the importing Party shall not visit the factory or premises of any exporter or producer in the territory of the exporting Party without written prior consent from the exporter or producer. 4. The above written communication shall at a minimum include:

(a) the identity of the Customs Administration issuing the request;

(b) the name of the exporter of the good in the exporting Party to whom the request is addressed;

(c) the date the written request is made; (d) the proposed date and place of the visit;

(e) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the Certificate of Origin; and

(f) the names and titles of the officials of the Customs Administration of the importing Party who will participate in the visit.

5. The Customs Administration of the importing Party shall notify the Customs Administration of the exporting Party when it initiates a verification action under this Article.

6. The Customs Administration of the importing Party shall complete any action to verify eligibility for preferential tariff

treatment within 90 days from the commencement of such action, and make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within 30 days.

Article 4.24. Determination of Origin and Preferential Tariff Treatment

1. Each Party shall provide that, when an importer in its territory does not comply with any requirement of this Chapter and Chapter 3 (National Treatment and Market Access for Goods), the claimed preferential tariff treatment may be suspended or denied for the imported good from the territory of the other Party.

2. The Customs Administration of the importing Party may suspend the application of preferential tariff treatment to a good that is the subject of an origin verification action under Article 4.22 or 4.23, for the duration of that action or any part thereof.

3. The Customs Administration of the importing Party may deny a claim for preferential tariff treatment when:

(a) the good does not qualify as an originating good; or

(b) the importer or the exporter fails to comply with any of the relevant requirements of this Chapter.

Article 4.25. Appeal

The importing Party shall grant the right of appeal in matters relating to eligibility for preferential tariff treatment to an importer, exporter or producer of a good traded or to be traded between the Parties, in accordance with its laws and regulations and practices.

Article 4.26. Consultation, Review and Modification

The Parties shall consult regularly to ensure that the provisions in this Chapter are administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Chapter.

Article 4.27. Non-party Invoices

The Customs Administration of the importing Party shall not reject a Certificate of Origin only for the reason that the invoice is issued in a non-Party.

Article 4.28. Confidentiality

For greater certainty, the Parties confirm that Article 5.9 (Confidentiality - Customs Administration Chapter) applies to this Chapter.

Article 4.29. Goods In Storage

In accordance with Article 4.18 or Article 4.19, the Customs Administration of the importing Party shall grant preferential tariff treatment for a good which, on the date of entry into force of this Agreement, is customs duty unpaid and stored in a warehouse regulated by the Customs Administration, provided:

(a) the good satisfies all applicable requirements of this Chapter; and

(b) the importer submits a Certificate of Origin in accordance with this Chapter to the Customs Administration of the importing Party.

Annex 4-A. Minimum requirements for a certificate of origin

Exporter name and address;

Consignee name and address;

Marks and numbers;

Number and kind of packages;

Description of goods;

Harmonized System Code;

The applicable rule of origin;

Declaration certifying goods meet the applicable rule of origin;

Name, title and signature of person completing the Certificate of Origin;

Date of issue; and

Number of Certificate of Origin.

Annex 4-B. Example of a certificate of origin

AUSTRALIA-CHILE FREE TRADE AGREEMENT / TRATADO DE LIBRE COMERCIO

CERTIFICATE OF ORIGIN / CERTIFICADO DE ORIGEN

Certificate / Certificado No.

1. Exporter / Exportador

2. Consignee / Consignatario

3. Marks and Numbers / Marcas y Números	4. Number and Kind of Packages / Número y clase de bultos	5. Description of Goods / Descripción de las Mercancías	6. Rule of Origin / Regla de Origen	7. Harmonized System Code / Clasificación Sistema Armonizado

8. Remarks / Observaciones

9. Declaration by the exporter / Declaración del exportador:

I, the undersigned, declare that the above details are true and accurate and the good(s) described above meet the condition(s) required for the issuance of this certificate / El que suscribe declara que la(s) mercancía(s) arriba descrita(s) cumple(n) la(s) condición(es) exigida(s) para la emisión del presente certificado.

Country of origin / País de origen.....

Place and date / Lugar y fecha.....

Name / Nombre.....

Title / Cargo.....

Signature / Firma.....

AUSTRALIA-CHILE FREE TRADE AGREEMENT

CERTIFICATE OF ORIGIN INSTRUCTIONS

For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the Customs Import Declaration is made. Please print or type.

Certificate No: Provide a unique number for the Certificate of Origin.

Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. Legal tax identification number is: in Australia, the Australian Business Number; in Chile, the Unique Tax Number ("Rol Unico Tributario").

Field 2: State the full legal name, address (including country) of the consignee.

Field 3: Marks and numbers on the packages.

Field 4: Number and kind of packages.

Field 5: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (HS) description of the good. If the Certificate of Origin covers a single shipment of a good, include the invoice number as shown on the commercial invoice.

Field 6: For each good described in Field 5, state which criterion (A to D) is applicable. The rules of origin are contained in Chapter 4 and Annex 4-C of the Agreement. NOTE: Indicate at least one of the preference criteria below.

Preference Criteria:

A The good is a wholly obtained good of a Party.

B The good is produced entirely in the territory of the Party exclusively from originating material.

C Satisfies all applicable requirements of Annex 4-C (Rules of Origin Schedule), as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.

D Otherwise qualifies as an originating good under the Rules of Origin Chapter.

Field 7: For each good described in Field 5 identify the HS tariff classification to 6 digits.

Field 8: Remarks. For example, if a good is invoiced by a non-Party operator, indicate "Invoice by a non-Party".

Field 9: This field must be completed, signed and dated by the exporter. The date must be the date the Certificate of Origin was completed and signed. Title refers to the title or position within the company of the person who completes and signs the certificate of origin.

Annex 4-C. Rules of origin schedule

Headnotes to the Schedule

1. The following definitions apply:

(a) **Subheading** means the first six digits in the tariff classification number under the Harmonized System;

(b) **Heading** means the first four digits in the tariff classification number under the Harmonized System; and

(c) **Chapter** means the first two digits in the tariff classification number under the Harmonized System.

2. The specific rule, or specific set of rules, that applies to a particular heading (4-digit code) or subheading (6-digit code) is set out immediately adjacent to the heading or subheading.

3. A requirement of a change in tariff classification applies only to non- originating materials.

4. When a heading or subheading is subject to alternative specific rules of origin, the rule will be considered to be met if a good satisfies one of the alternatives.

5. Where a specific rule of origin is defined using the criterion of a change in tariff classification, and the rule is written to exclude tariff provisions at the level of a chapter, heading or subheading of the Harmonized System, each Party shall construe the rule of origin to require that materials classified in those excluded provisions be originating for the good to qualify as originating.

6. Chapter notes within this Schedule apply to all headings or subheadings within the indicated chapter or group of chapters unless there exists a specific exclusion.

Chapter 5. Customs Administration

Article 5.1. Definitions

For the purposes of this Chapter:

(a) customs law means such laws and regulations administered and enforced by the Customs Administration of each Party concerning the importation, exportation, and transit/transhipment of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items

across the boundary of the customs territory of each Party; and

(b) customs procedures means the treatment applied by the Customs Administration of each Party to goods which are subject to customs control.

Article 5.2. Scope and Coverage

This Chapter applies to customs procedures applied to goods traded between the Parties.

Article 5.3. Publication and Enquiry Points

1. Each Party shall publish on the Internet its laws, regulations and administrative procedures applicable to or enforceable by its Customs Administration.

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

3. Each Party shall endeavour to provide interested persons and the other Party with advance notice of any proposed customs laws and practices that are likely to substantially affect the operation of the Agreement.

Article 5.4. Review and Appeal

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

(a) administrative review independent of the official that issued the determination; and

(b) judicial review of the determination or decision taken at the final level of administrative review.

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 5.5. Penalties / Sanctions

Each Party shall maintain measures for the imposition of civil or administrative penalties or sanctions, and, where appropriate, criminal sanctions for violations of its customs laws.

Article 5.6. Customs Procedures and Facilitation

1. Each Party shall ensure that its customs procedures conform, where possible and to the extent permitted by its respective laws, regulations and practices, to international standards and recommended practices established by the World Customs Organization.

2. Each Party shall ensure that its customs procedures and practices:

(a) are administered in an impartial, uniform and reasonable manner; and

(b) avoid arbitrary and unwarranted procedural obstacles. 3. The Customs Administration of each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate international trade.

4. Each Party shall ensure goods are released within a time period no longer than that required to ensure compliance with its customs laws.

5. A Party may, so long as other customs requirements have been met, and to the extent possible:

(a) release goods at the point of arrival, without temporary transfer to warehouses or other locations; or

(b) release goods prior to, and without prejudice to, the final determination by its Customs Administration of the applicable customs duties, taxes and fees.

Article 5.7. Risk Management

1. Each Party shall administer its customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To the extent possible, systems that allow for information regarding an importation to be processed in advance of arrival are to be used to clear goods.

2. Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures.

Article 5.8. Cooperation

1. Each Party's Customs Administration shall endeavor to provide the Customs Administration of the other Party with advance notice of any significant modification of administrative policy regarding the implementation of its customs laws and practices that are likely to substantially affect the operation of this Agreement.

2. To the extent permitted by their domestic laws, rules and regulations, the Customs Administrations of both Parties shall endeavour to provide each other with:

(a) information to assist in the investigation and prevention of infringements of customs and customs related laws and regulations; and

(b) any other customs matters agreed by the Parties.

Article 5.9. Confidentiality

1. Each Party's Customs Administration undertakes not to use any information received in accordance with this Chapter or Chapter 4 (Rules of Origin) other than for the purpose for which the information was given, or to disclose any such information, except in cases where:

(a) the Customs Administration that furnished the information has expressly approved its use or disclosure for other purposes related to this Chapter or Chapter 4 (Rules of Origin); or

(b) the national law of the receiving Customs Administration requires disclosure, in which case the receiving Customs Administration shall notify the Customs Administration that furnished the information of the relevant law.

2. Any information received in accordance with this Chapter or Chapter 4 (Rules of Origin) shall be treated as confidential and will be subject to the same protection and confidentiality as the same kind of information is subject to under the national law of the Customs Administration where it is received.

3. Nothing in this Chapter or Chapter 4 (Rules of Origin) shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

(a) be contrary to the public interest as determined by its laws, rules or regulation;

(b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals; or

(c) impede law enforcement.

Article 5.10. Advance Rulings

1. Each Party, where possible and to the extent permitted by its domestic laws, regulations and practices, shall provide for written advance rulings to be issued to a person described in subparagraph 2(a) concerning tariff classification, valuation and the qualification of a good as an originating good under this Agreement.

2. Each Party shall adopt or maintain procedures for issuing written advance rulings which shall:

(a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of the goods concerned;

(b) include a detailed description of the information required to process a request for an advance ruling;

(c) allow its Customs Administration, at any time during the course of an evaluation of an application for an advance ruling, to request that the applicant provide additional information necessary to evaluate the request;

(d) ensure that an advance ruling be based on the facts and circumstances presented by the applicant and any other

relevant information in the possession of the decision-maker;

(e) provide that an advance ruling be issued to the applicant expeditiously, or in any case within 30 working days of the receipt of all necessary information; and

(f) provide a written explanation for the reasons for the advance ruling.

3. Subject to paragraph 4, each Party shall apply an advance ruling to importations into its territory beginning on the date it issues the ruling or on any other date specified in the ruling. The Party shall ensure the same treatment of all importations regardless of the importer, exporter or producer involved, where the facts and circumstances are identical in all material respects.

4. A Party may modify or revoke an advance ruling where, consistent with this Agreement:

(a) there is a change in the law;

(b) incorrect information was provided or relevant information was withheld;

(c) there is a change in a material fact; or

(d) there is a change in the circumstances on which the ruling was based.

Article 5.11. Paperless Trading

1. The Customs Administration of each Party, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed by the World Customs Organization, including adoption of the World Customs Organization data model for the simplification and harmonisation of data.

2. The Customs Administration of each Party shall work towards having electronic means for all its customs reporting requirements, as soon as practicable.

3. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties including businesses directly affected. Article 5.12: Fees and Charges

For greater certainty, the Parties confirm that Article 3.10 (Administrative Fees and Formalities - National Treatment and Market Access for Goods Chapter) applies to customs fees and charges.

Chapter 6. Sanitary and Phytosanitary Measures

Article 6.1. Definitions

For the purposes of this Chapter:

sanitary and phytosanitary (SPS) measures means any measure referred to in Annex A, paragraph 1 of the SPS Agreement.

Article 6.2. Objectives

The objectives of this Chapter are to:

(a) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;

(b) deepen mutual understanding of each Party's regulations and procedures relating to and consultations on and implementation of SPS measures; and

(c) strengthen cooperation between Australian and Chilean government agencies with responsibility for matters covered by this Chapter.

Article 6.3. Scope and Coverage

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

2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.4. General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. The Parties shall cooperate on priority proposals for technical assistance and capacity building to enhance the capability on SPS related aspects to further the achievement of the objectives of this Chapter.

3. The Parties shall cooperate in relevant international bodies engaged in work on SPS related issues, including the WTO SPS Committee, the various Codex

Committees (including the Codex Alimentarius Commission), the International Plant Protection Convention, the World Organisation for Animal Health (OIE) and other international and regional fora on food safety and human, animal and plant life or health.

Article 6.5. Consultations on and Implementation of Sanitary and Phytosanitary Measures

1. Each Party shall identify an overall contact point relating to SPS measures ("SPS Contact Point"). For the purpose of this Article, the SPS Contact Point shall be:

(a) in the case of Australia, the Department of Agriculture, Fisheries and Forestry, or its successor; and

(b) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor.

2. On request of a Party for consultations on a matter arising under this Chapter, the Parties shall enter into consultations between relevant government agencies with responsibility for that matter under the scope of the SPS Contact Point.

3. Each Party's SPS Contact Point shall:

(a) coordinate requests for technical assistance and capacity building programs on SPS matters;

(b) review progress on addressing SPS matters that may arise between the Parties;

(c) communicate SPS priorities between the Parties;

(d) facilitate the consideration of requests for information and clarification of issues with the other Party;

(e) facilitate communication between relevant experts when the consideration of scientific or technical issues requires such contact;

(f) promote and facilitate cooperation on SPS issues between the Parties;

(g) perform any other activities that facilitate transparency in the implementation of SPS measures; and

(h) ensure that all relevant government agencies participate in the above activities as appropriate and arrange meetings between relevant experts of each Party on these activities when required.

4. The Parties acknowledge the value of exchanging information on their

respective SPS measures and, to ensure transparency in the implementation of SPS measures, each Party shall:

(a) exchange a list, to be updated as appropriate, of officials responsible for SPS matters in the agencies of the Parties; and

(b) provide notifications to a nominated SPS official of the other Party of measures imposed in response to an urgent threat to human, animal or plant life or health.

5. The SPS Contact Point shall be included in all communications between the Parties made pursuant to this Article.

Chapter 7. Technical Regulations, Standards and Conformity Assessment Procedures

Article 7.1. Definitions

For the purposes of this Chapter:

technical regulation, standard and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Article 7.2. 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 7.3. Scope and Coverage

1. Except as provided in paragraphs 2 and 3 of this Article, this Chapter applies to all standards, technical regulations, and conformity assessment procedures of the central level of government that may, directly or indirectly, affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance by regional or local governments and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures in the implementation of the provisions of this Chapter.

3. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies are not subject to the provisions of this Chapter, but are addressed in Chapter 15 (Government Procurement), according to its coverage.

4. This Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A, paragraph 1 of the SPS Agreement, which are covered in Chapter 6 (Sanitary and Phytosanitary Measures).

Article 7.4. Affirmation of Agreement on Technical Barriers to Trade

The Parties affirm their rights and obligations under the TBT Agreement.

Article 7.5. International Standards

1. Each Party shall use relevant international standards, to the extent provided in Article 2.4 of the TBT Agreement, as a basis for its technical regulations.

2. 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 7.6. Trade Facilitation

The Parties shall work cooperatively in the fields 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 bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

(a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;

(b) alignment with international standards;

(c) reliance on a supplier's declaration of conformity; and

(d) use of accreditation to qualify conformity assessment bodies, as well as cooperation through recognition of conformity assessment procedures.

Article 7.7. Technical Regulations

1. Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its

regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its reasons.

3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

Article 7.8. Conformity Assessment Procedures

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

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

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

(c) a Party may agree with the other 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 the other Party;

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

(f) a Party may facilitate the consideration of a request by the other Party to recognise the results of conformity assessment procedures conducted by bodies in the other Party's territory, including through negotiation of agreements in a sector nominated by that other Party.

The Parties shall exchange information on these and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

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

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

4. Where a Party declines a request from the other 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 Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

Article 7.9. Transparency

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

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons 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 through the enquiry point the 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 the public and the other Party to make comments in writing on the proposal.

4. 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 subparagraph 3(b).

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

6. 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 7.10. Committee on Technical Barriers to Trade

1. In order to facilitate implementation of this Chapter and cooperation between the Parties, the Parties hereby establish a Committee on Technical Barriers to Trade,comprising representatives of each Party.

2. For the purposes of this Article, the Committee shall be coordinated by ("the Coordinators"):

(a) in the case of Australia, the Department of Innovation, Industry, Science and Research, or its successor; and

(b) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor.

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;

(d) exchanging information on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party;

(e) providing technical advice, information and assistance on mutually agreed terms and conditions to enhance the Parties' standards, technical regulations and conformity assessment procedures;

(f) conducting joint studies and holding seminars on mutually agreed terms and conditions to enhance the Parties' understanding of technical regulations, standards and conformity assessment procedures;

(g) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;

(h) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;

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

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

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

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

(m) as it considers appropriate, reporting to the Joint FTA Committee on the implementation of this Chapter.

4. Where the Parties have had recourse to consultations under paragraph 3(k) such consultations shall, on the agreement of the Parties, constitute consultations under Article 21.3 (Consultations - Dispute Settlement Chapter).

5. A Party shall, on request, give favourable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.

6. The Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.

7. The Committee shall meet at such venues and times as may be agreed by the Parties. Meetings may be held via teleconference, videoconference, or through any other means, as mutually determined by the Parties. By mutual agreement, ad hoc working groups may be established, if necessary.

Article 7.11. 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 period of time.

Chapter 8. Trade Remedies

Article 8.1. Global Safeguards

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

Article 8.2. Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the WTO Agreement, and their successors, with regard to the application of antidumping and countervailing duties.

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

Chapter 9. Cross-border Trade In Services

Article 9.1. Definitions

For the purposes of this Chapter:

(a) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance (part of CPC 8868);

(b) **airport operation services** means passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract basis (excluding cargo handling) (as covered under CPC 7461);

(c) **computer reservation system services** means services provided by computerised systems that contain information about air carrier's schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued (part of CPC 7523);

(d) **cross-border trade in services or cross-border supply of services** means the supply of a service:

(i) from the territory of one Party into the territory of the other Party;

(ii) in the territory of one Party by a person of that Party to a person of the other Party; or

(iii) by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by an investor of the other Party or a covered investment;

(e) **enterprise** means an enterprise as defined in Article 2.1(f) (Definitions of General Application — General Definitions Chapter), and a branch of an enterprise;

(f) **enterprise of a Party** means an enterprise organised or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;

(g) **ground handling services** means container handling services for air transport services only (part of CPC 7411); other cargo handling services for air transport services only, including baggage handling (part of CPC 7419); and other supporting services for air transport (CPC 7469);

(h) measures adopted or maintained by a Party means measures adopted or maintained by:

(i) central, regional, or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

(i) **selling and marketing of air transport services** has the same meaning as defined in paragraph 6(b) of the GATS Annex on Air Transport Services, except that "marketing" shall be limited to market research, advertising and distribution;

(j) **service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(k) **service supplier of a Party** means a person of that Party who seeks to supply or supplies a service; and

(l) **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.

Article 9.2. 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 the other 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 the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. Articles 9.5 and 9.8 shall also apply to measures adopted and maintained by a Party affecting the supply of a service in its territory by an investor of the other Party or a covered investment. (9-1)

3. This Chapter does not apply to:

(a) financial services as defined in Article 12.1(e) (Definitions — Financial Services Chapter);

(b) government procurement;

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

(d) services supplied in the exercise of governmental authority within the territory of each respective Party; or

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

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

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

(iii) computer reservation system services;

(iv) airport operation services (excluding cargo handling);

(v) ground handling services; and

(vi) specialty air services.

4. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

(9-1) For greater certainty, the Parties understand that nothing in this Chapter, including this paragraph, is subject to Investor-State Dispute Settlement pursuant to Section B of Chapter 10 (Investment).

Article 9.3. National Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

Article 9.4. Most-favoured-nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to the services and service suppliers of a non-Party.

Article 9.5. Market Access

Neither 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 the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of service operations or 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 (9-2); 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.

(9-2) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

Article 9.6. Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 9.7. Non-conforming Measures

1. Articles 9.3, 9.4, 9.5 and 9.6 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 9.3, 9.4, 9.5 or 9.6.

2. Articles 9.3, 9.4, 9.5 and 9.6 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

Article 9.8. Domestic Regulation

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

2. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, including by ensuring that such measures are, inter alia:

(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. Where a Party maintains measures relating to qualification requirements and procedures, technical standards and licensing requirements, the Party shall:

(a) make publicly available:

(i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and

(ii) information on technical standards;

(b) where any form of authorisation is required for the supply of a service, ensure that it will:

(i) within a reasonable period of time after the submission of an application deemed complete under its domestic laws and regulations, consider the application and make a decision as to whether or not to grant the relevant authorisation;

(ii) promptly inform the applicant of the decision whether or not to grant the relevant authorisation;

(iii) upon the request of the applicant, provide without undue delay, information concerning the status of the application; and

(iv) where practicable, upon the written request of an unsuccessful applicant, provide written reasons for a decision not to grant the relevant authorisation;

(c) provide for adequate procedures to verify the competency of professionals of the other Party;

(d) in appropriate professional and other service sectors consider, and where feasible, take steps to implement a temporary or project-specific licensing or registration regime, based on the foreign supplier's home licence or recognised professional body membership (without the need for further written or oral examination) with a view to facilitating temporary access for foreign service suppliers to provide services in relation to specific projects or for limited periods in circumstances where specific expertise is required. Such a temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence subsequent to satisfying the necessary local licensing requirements;

(e) in each sector where an examination must be passed as a pre-requisite to the provision of a service in the territory of the Party:

(i) in the case of examinations administered by government authorities, take reasonable steps to schedule examinations no less frequently than once in every calendar year; or

(ii) in the case of examinations solely administered by non- governmental bodies or professional associations, use best efforts to encourage such bodies or associations to schedule examinations no less frequently than once in every calendar year; and

in each case, the Party shall ensure that such examinations are open to applicants of the other Party. The possibility of using

electronic means for conducting such examinations, of conducting such examinations orally, and of providing opportunities for taking such exams in the territory of the other Party should be explored.

4. Notwithstanding Article 9.1(h), paragraphs 1 to 3 above shall not apply where the relevant measures are the responsibility of non-governmental bodies. However, each Party shall encourage such non-governmental bodies to comply with the requirements of paragraphs 1 to 3 above.

5. If the results of the negotiations related to Article VI:4 of GATS enter into effect, the Parties shall jointly review those results with a view to their incorporation into this Agreement, as considered appropriate by the Parties.

Article 9.9. Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 3, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party:

(a) nothing in Article 9.4 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licences or certifications granted in the territory of the other Party; and

(b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

Article 9.10. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise:

(a) owned or controlled either by persons of a non-Party or of the denying Party; and

(b) has no substantive business operations in the territory of the other Party.

Annex 9-A. Professional services

1. Further to Article 9.9, the Parties agree to support, to the extent that their resources permit, profession-led initiatives that seek to facilitate recognition of the qualifications and or registration/licensing of professionals of the other Party.

2. To that end, the Parties agree to establish contact points and, on the request of either Party, to consult and exchange information on professional qualifications and registration/licensing. Such information may include:

(a) relevant professional and regulatory bodies, including contact details;

(b) laws, regulations and/or rules relating to professional qualifications, registration/licensing;

(c) procedures for recognition of qualifications; and

(d) procedures for recognition of registration/licensing. 3. The Parties agree to support profession-led mutual recognition initiatives, if and when required and to the extent to which their resources permit, in ways that are indicated by professional bodies and/or a regulator that may be of assistance to the negotiation of a mutual recognition agreement.

Chapter 10. Investment

Article 10.1. Definitions

For the purposes of this Chapter:

(a) **Centre** means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

(b) **claimant** means an investor of a Party that is a party to an investment dispute with the other Party;

(c) **disputing parties** means the claimant and the respondent; disputing party means either the claimant or the respondent;

(d) **enterprise** means an enterprise as defined in Article 2.1(f) (Definitions of General Application — General Definitions), and a branch of an enterprise;

(e) **enterprise of a Party** means an enterprise constituted or organised under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

(f) **freely usable currency** means freely usable currency as determined by the International Monetary Fund under its Articles of Agreement,

(g) **ICSID Additional Facility Rules** means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes,

(h) **ICSID Convention** means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

(i) **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:

(i) an enterprise;

(ii) shares, stock, and other forms of equity participation in an enterprise;

(iii) bonds, debentures, loans and other debt instruments (10-1); but do not include a debt instrument of a Party or of a state enterprise;

(iv) futures, options and other derivatives;

(v) rights under contract, including turnkey, construction, management, production, concession, or revenue-sharing contracts;

(vi) intellectual property rights;

(vii) rights conferred pursuant to domestic law, such as concessions, licences, authorisations, and permits; (10-2) and

(viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

but investment does not mean an order or judgment entered in a judicial or administrative action;

(k) **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 either Party;

(l) **New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

(m) **non-disputing Party** means the Party that is not a party to an investment dispute;

(n) **respondent** means the Party that is a party to an investment dispute;

(o) **Secretary-General** means the Secretary-General of ICSID;

(p) **tribunal** means an arbitration tribunal established under Article 10.19 or 10.26; and

(q) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.

(10-1) 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, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

10-2 Whether a particular right conferred pursuant to domestic law, as referred to in subparagraph (vii), has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Party. Among such rights 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 such right has the characteristics of an investment.

Section A. Investment

Article 10.2. Scope and Coverage (10-3)

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

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Article 10.7 all investments in the territory of the Party.

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

3. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by a Party relating to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security to the extent that such bond or financial security is a covered investment.

4. This Chapter does not apply to:

(a) measures adopted or maintained by a Party to the extent that they are covered by Chapter 12 (Financial Services); and

(b) any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement, except as provided in Annex 10-E paragraph 2.

(10-3) For greater certainty, this Chapter is subject to and shall be interpreted in accordance with Annexes 10-A through 10-D.

Article 10.3. National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable 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 favourable 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.

Article 10.4. Most-favoured-nation Treatment (10-4)

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

(10-4) For greater certainty, Article 10.4 does not apply to the dispute settlement procedures set out in Section B of this Chapter, including requirements as to time.

Article 10.5. Minimum Standard of Treatment (10-5)

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.

(10-5) For greater certainty, Article 10.5 shall be interpreted in accordance with Annex 10-A.

Article 10.6. Treatment In Case of Strife

1. Notwithstanding Article 10.9.5(b), each Party shall accord to investors of the other Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; or (b) investors of any non-Party and their investments.

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 the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both in the event of a partial restitution, which in any case shall be prompt, adequate, and effective, and with respect to compensation, in accordance with paragraphs 2 to 4 of Article 10.11, mutatis mutandis.

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 10.9.5(b).

Article 10.7. Performance Requirements

Mandatory Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced 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 it produces or the services that it supplies to a specific regional market or to the world market.

Advantages Subject to Performance Requirements

2. Neither 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.

Exceptions and Exclusions

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 authorises use of an intellectual property right in accordance with Article 31 (10-6) 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; 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. (10-7)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (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 government 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.

(10-6) The reference to Article 31 includes footnote 7 to Article 31.

(10-7) The Parties recognise that a patent does not necessarily confer market power.

Article 10.8. Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority or less 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 10.9. Non-conforming Measures

1. Articles 10.3, 10.4, 10.7, and 10.8 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 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 10.3, 10.4, 10.7, and 10.8.

2. Articles 10.3, 10.4, 10.7, and 10.8 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 II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 17.5 (National Treatment — Intellectual Property Chapter) as specifically provided for in that Article.

5. Articles 10.3, 10.4, and 10.8 do not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government- supported loans, guarantees, and insurance.

Article 10.10. Transfers (10-8)

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, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to paragraphs 1 and 2 of Article 10.6 and Article 10.11; and

(f) payments arising under Section B.

2. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

3. 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 on the date of transfer.

4. Notwithstanding paragraphs 1 to 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures or derivatives;

(c) criminal or penal offences;

(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.

5. Notwithstanding paragraph 2, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

(10-6) For greater certainty, Article 10.10 is subject to Annex 10-C.

Article 10.11. Expropriation and Compensation (10-9)

1. Neither Party may expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation ("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 to 4; and

(d) in accordance with due process of law. 2. Compensation shall: (a) be paid without delay; (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realisable 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 licences 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 revocation, limitation, or creation is consistent with Chapter 17 (Intellectual Property).

(10-9) For greater certainty, Article 10.11 shall be interpreted in accordance with Annex 10-B.

Article 10.12. 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 the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or 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 domestic law.

Article 10.13. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party and to investments of that investor if the investor is an enterprise:

(a) owned or controlled either by persons of a non-Party or of the denying Party; and

(b) has no substantive business operations in the territory of the other Party.

Section B. Investor-state Dispute Settlement

Article 10.14. Scope of Investor-state Dispute Settlement

Section B applies where there is a dispute between a Party and an investor of the other Party relating to a covered investment made in the territory of a Party in accordance with its laws, regulations and investment policies.

Article 10.15. Consultations and Negotiations

1. In the event of an investment dispute, the claimant and the respondent shall initially seek to resolve the dispute through consultations and negotiations, which may include the use of non-binding, third-party procedures. Such consultations shall be initiated by a written request for consultations delivered by the claimant to the respondent.

2. The parties shall endeavour to commence consultations within 30 days of receipt by the respondent of the request for consultations, unless the disputing parties otherwise agree.

3. With the objective of resolving an investment dispute through consultations, a claimant shall make all reasonable efforts to provide the respondent, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

4. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

Article 10.16. Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a request for consultations:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim that:

(i) the respondent has breached an obligation under Section A; and

(ii) 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 that:

(i) the respondent has breached an obligation under Section A; and

(ii) 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 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. A claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention, provided that both the non-disputing Party and the respondent are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the non-disputing Party or the respondent, but not both, is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration") is received under the applicable arbitral rules.

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 referred to in paragraph 4:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint the claimant's 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 be deemed to satisfy the requirements of:

(a) Chapter II 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 II of the New York Convention for an "agreement in writing"; and

(c) Article 1 of the UNCITRAL Arbitration Rules.

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 causing loss or damage to a claimant or covered investment.

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 referred to in Article 10.16.6 is accompanied:

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute

settlement procedures, any proceeding with respect to the events alleged to give rise to the claimed breach.

3. No claim may be submitted to arbitration, if the claimant referred to in Article 10.16.1(a) or 10.16.1(b), has alleged the breach of an obligation under Section A in proceedings before a court or an administrative tribunal of a Party, or other binding dispute settlement procedure. For greater certainty, if an investor elects to submit a claim, of the type previously described to a court or administrative tribunal of the Party, that election shall be definitive and the investor may not thereafter submit the claim to arbitration under this Section.

4. 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.

5. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to conciliation or arbitration under Article 10.17, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

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 and who shall be a national of a third country.

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from, either Party or the claimant.

3. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

4. 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.

5. Pursuant to paragraph 1, where the disputing parties have agreed on a sole arbitrator or each individual member of the tribunal and one or more of those arbitrators has the nationality of one of the disputing parties, the appointment shall be in writing.

6. Subject to paragraph 7:

(a) the costs of arbitration shall be born equally by the disputing parties unless the tribunal decides otherwise; and

(b) the prevailing ICSID rate for arbitrators shall apply.

7. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrators' remuneration.

8. Even without the consent of the tribunal that he or she was a member, where any arbitrator appointed as provided for in this Section resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

Article 10.20. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3(b), (c) or (d). 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. The tribunal shall have the authority to accept and consider amicus curiae written submissions that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party (the "submitter"). The submissions shall be provided in both Spanish and English, and shall identify the submitter and any Party, other government, person, or organisation, other than the submitter, that has provided, or will provide, any

financial or other assistance in preparing the submission. Where such submissions are admitted by the tribunal, the tribunal shall provide to the parties an opportunity to respond to such written submissions.

3. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the jurisdiction or the competence of the tribunal, a tribunal shall address and decide as a preliminary question any objection by the respondent that the claim is manifestly without legal merit.

(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 referred to in Article 10.16.4, 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) The respondent does not waive any objection as to the jurisdiction or competence of the tribunal 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 the following paragraph.

4. 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 3 or any objection that the dispute is not within the tribunal's jurisdiction or 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 of time, which may not exceed 30 days.

5. When it decides a respondent's objection under paragraph 3 or 4, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' 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.

6. A respondent may not assert as a defence, counterclaim, right of set-off, or otherwise that the claimant has received or will receive indemnification or other compensation for all or part of the alleged loss or damages pursuant to an insurance or guarantee contract.

7. 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 the purposes of this paragraph, an order includes a recommendation.

8. At the request of a disputing party, a tribunal shall, before issuing an award on liability, transmit its proposed award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed award, only the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal shall consider any such comments and issue its award not later than 45 days after the expiration of the 60 day comment period.

Article 10.21. The Non-disputing Party

1. No later than 30 days after the date that such documents have been delivered to the respondent, the respondent shall deliver to the non-disputing Party a copy of:

(a) the notice of intent referred to in Article 10.16.2;

(b) the notice of arbitration referred to in Article 10.16.4;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to paragraphs 2 and 3 of Article 10.20 and Article 10.26;

(d) minutes or transcripts of hearings of the tribunal, where available; (e) orders, awards, and decisions of the tribunal; and

(e) any other document submitted to the tribunal, including redacted versions of confidential documents submitted in accordance with Article 10.22.

2. On written notice to the disputing parties, the non-disputing Party may make a submission to a tribunal on any question of interpretation of this Agreement.

3. The non-disputing Party receiving confidential information pursuant to paragraph 1 shall treat the information as if it were a disputing party.

Article 10.22. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, make them available to the public at their cost:

(a) the notice of intent referred to in Article 10.16.2;

(b) the notice of arbitration referred to in Article 10.16.4;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to paragraphs 2 and 3 of Article 10.20, Article 10.21.2 and Article 10.26;

(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 confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure including closing the hearing for the duration of any discussion of confidential information.

3. Nothing in this Section requires a respondent to disclose information which would impede law enforcement or information that is privileged or otherwise protected from disclosure under a Party's law or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Security Exceptions — General Provisions and Exceptions Chapter) or Article 22.5 (Disclosure of Information — General Provisions and Exceptions Chapter).

4. Information that may be designated as confidential information is limited to any sensitive factual information that is not available in the public domain.

5. Confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law 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 confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law 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 confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, submit a redacted version of the document that does not contain the information. Only the redacted version shall be made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law. 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 subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

6. A disputing party may disclose to other persons in connection with the arbitral proceedings such confidential documents as it considers necessary for the preparation of its case, but it shall require that any confidential information in such documents is protected.

7. Nothing in this Section authorises a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.23. Governing Law

1. Subject to paragraph 2, when a claim is submitted under Article 10.16.1(a) or Article 10.16.1(b), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. A decision of the Joint FTA Committee issuing its interpretation of a provision of this Agreement under Article 20.1.3(f) Joint FTA Committee — Institutional Arrangements Chapter) shall be binding on a tribunal established under this Section, and any award must be consistent with that decision.

Article 10.24. Interpretation of Annexes

1. Where a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint FTA Committee on the issue. The Joint FTA Committee shall submit in writing any decision issuing its interpretation under Article 20.1.3(f) (Joint FTA Committee — Institutional Arrangements Chapter) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint FTA Committee under paragraph 1 shall be binding on the tribunal, and any award must be consistent with that decision. If the Joint FTA Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.25. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised 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 10.26. 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 with the agreement of all the disputing parties sought to be covered by the order or in accordance with the terms of paragraphs 2 to 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. Subject to paragraph 5, unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall be constituted in accordance with Article 10.19 except that, for the purpose of Article

10.19.1, the claimants shall appoint a single arbitrator by agreement.

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 may be requested by any disputing party sought to be covered by the order, to appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the arbitrator to be appointed by the Secretary-General may be a national of the respondent, and if the claimants fail to appoint an arbitrator, the arbitrator to be appointed by the Secretary-General may be a national of the Party other than the respondent.

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 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 Section B of this Agreement.

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 10.27. 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 attorneys' 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 may not 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

(i) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.16.5(d):

(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. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, or the New York Convention regardless of whether actions have been taken under Article 10.18.5.

9. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Article 10.28. 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-F.

Annex 10-A. Customary international law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers, for the purposes of this Agreement, to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-B. Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 10.11.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 10.11.1 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, non-discriminatory 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-C. Transfers

Chile

1. Chile reserves the right of the Central Bank of Chile (Banco Central de Chile) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (Ley 18.840, Ley Orgdnica Constitucional del Banco Central de Chile) or other legislation, in order to ensure currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, inter alia, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (encaje).

2. Notwithstanding paragraph 1, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 N° 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

3. When applying measures under this Annex, Chile, as established in its legislation, shall not discriminate between Australia and any third country with respect to transactions of the same nature.

Annex 10-D. Dl 600

Chile

1. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute (Decreto Ley 600, Estatuto de la Inversioén Extranjera) (hereinafter referred to in this Annex as "DL 600"), and to Law 18.657, Foreign Capital Investment Fund Law (Ley 18.657, Ley de Fondos de Inversion de Capital Extranjero), to the continuation or prompt renewal of such laws, to amendments to those laws or to any special and/or voluntary investment regime that may be adopted in the future by Chile.

2. For greater certainty, it is understood that the Foreign Investment Committee of Chile has the right to accept and reject applications to invest through DL 600 and Law 18.657. Additionally, the Foreign Investment Committee has the right to regulate the terms and conditions of foreign investment under DL 600 and Law 18.657.

3. Nowithstanding paragraphs 1 and 2, Chile shall accord to an investor of Australia or its investment that is a party to an investment contract under DL 600, the better of the treatment required under Section A of this Chapter or the treatment under the investment contract.

4. Chile shall permit an investor of Australia or its investment that has entered into an investment contract under DL 600 to amend the investment contract to make it consistent with the obligation referred to in paragraph 3.

5. Notwithstanding any other provision in this Agreement, Chile may prohibit an investor of Australia or a covered investment from transferring from Chile proceeds of the sale of all or any part of an investment made pursuant to a contract under DL 600 for up to one year after the date that the investor or covered investment transferred funds to Chile to establish the investment.

Annex 10-E. Termination of the bilateral investment agreement

1. Without prejudice to paragraph 2, the Parties agree that the "Agreement between the Government of Australia and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments", and its Protocol, signed in Canberra on 9 July 1996, (hereafter the "IPPA''), will terminate on the date of entry into force of the present Agreement.

2. The IPPA shall continue to apply to any investment (as defined in the IPPA) which was made before the entry into force of

this Agreement with respect to any act, fact or situation which originated before the entry into force of this Agreement.

3. Notwithstanding paragraph 2, an investor may only submit a claim under Article 11 of the IPPA (Settlement of disputes between a Contracting Party and an investor of the other Contracting Party) within three years from the date of entry into force of this Agreement.

4. The Parties agree that this Annex constitutes an amendment to Article 12 of the IPPA and is effective to terminate the IPPA.

Annex 10-F. Service of documents on a party under section b

Australia

Notices and other documents in disputes under Section B shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade

Chile

Notices and other documents in disputes under Section B shall be served on Chile by delivery to:

Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la República de Chile

Teatinos 180

Santiago, Chile

Chapter 11. Telecommunications

Article 11.1. Definitions

For the purposes of this Chapter:

(a) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(b) **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 and in a way that involves no unreasonable dialing delays;

(c) **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;

(d) **essential facilities** means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers, and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(e) **interconnection** means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with the users of another supplier and to access services provided by another supplier;

(f) **leased circuit** 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;

(g) **major supplier** means a supplier or suppliers which alone or together have the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications networks or services as a result of control over essential facilities or use of its position in the market;

(h) **network element** means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such a facility or equipment, which may include local loop, sub loops and line sharing;

(i) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public

telecommunications networks or services in like circumstances;

(j) **number portability** means the ability of end-users to retain existing telephone numbers when switching between suppliers of like public telecommunications networks or services;

(k) **physical co-location** means physical access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications networks or services;

(l) **public telecommunications network** means the telecommunications infrastructure which a Party requires to be used to provide telecommunications services;

(m) **public telecommunications service** means any telecommunications service which a Party requires 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;

(n) **regulatory decisions** means decisions by regulators made pursuant to authority conferred under domestic law including in relation to:

(i) the making of rules for the telecommunications industry excluding legislation and statutory rules;

(ii) the approval of terms and conditions, standards and codes to apply in the telecommunications industry;

(iii) the adjudication or other resolution of disputes between suppliers of public telecommunications networks or services; and

(iv) licensing;

(o) **telecommunications** means the transmission and reception of signals by any electromagnetic means;

(p) **telecommunications regulatory body** means any body or bodies responsible for the regulation of telecommunications; and

(q) **user** means an end-user or a supplier of public telecommunications networks or services.

Article 11.2. 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 networks and services;

(b) measures adopted or maintained by a Party relating to suppliers of public telecommunications networks and services;

(c) measures adopted or maintained by a Party relating to the conduct of major suppliers; and

(d) other measures relating to public telecommunication networks or services.

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

3. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks and services, this Chapter does not apply to measures that a Party adopts or maintains relating to broadcast or cable distribution of radio or television programming.

4. Nothing in this Chapter shall be construed as:

(a) requiring 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) requiring 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) preventing a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third persons.

Section A. Access to and Use of Public Telecommunications Networks or Services

Article 11.3. Access and Use

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders on a timely basis and on terms and conditions that are reasonable and non-discriminatory such as those set out in paragraphs 2 to 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 enterprise;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications networks and 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 either Party or any WTO Member.

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 personal data of end users of public telecommunications networks or 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 a 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 as 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 they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;

(b) requirements, where necessary, for the inter-operability of such services;

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and

(d) notification, registration and licensing which, if adopted or maintained, are transparent and applications processed without undue delay.

Section B. Suppliers of Public Telecommunications Networks or Services

Article 11.4. Interconnection

1. Each Party shall ensure suppliers of public telecommunications networks or services in its territory provide, directly or

indirectly, interconnection with the suppliers of public telecommunications networks or services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications networks or 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 networks or services and only use such information for the purpose of providing those services.

Article 11.5. Number Portability

Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide number portability, to the extent technically and economically feasible, in a reasonable period of time and on terms and conditions that are reasonable and non-discriminatory.

Article 11.6. Dialing Parity and Access to Telephone Numbers

Each Party shall ensure that:

(a) its telecommunication regulatory body has the authority to require that suppliers of public telecommunications services in its territory provide dialing parity within the same category of service to suppliers of public telecommunications services of the other Party; and

(b) suppliers of public telecommunications services of the other Party are afforded non-discriminatory access to telephone numbers.

Article 11.7. 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 authorised to operate a submarine cable system as a public telecommunications service.

Section C. Conduct of Major Suppliers of Public Telecommunications Networks and Services

Article 11.8. Major Supplier Competitive Safeguards

Each Party shall maintain 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, including in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Article 11.9. Treatment by Major Suppliers

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks and services of the other Party treatment no less favourable than such major suppliers accord in like circumstances to their subsidiaries, their affiliates or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications networks or services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 11.10. Interconnection with Major Suppliers (11-1)

(11-1) Australia's interconnection regime provides access on terms and conditions which are fair and reasonable to all parties and which do not unfairly discriminate between users. Access rights are guaranteed by legislation and the terms and conditions of access are established primarily through processes of commercial negotiation or by reference to access undertakings given by suppliers of public telecommunications

networks or services which may draw upon an industry code of practice. Any code of practice and each supplier's undertaking will be subject to approval by the regulator.

General Terms and Conditions

1. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates (11-2),

(c) of a quality no less favourable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for like service of their subsidiaries or other affiliates;

(d) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates (11-3) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that suppliers seeking interconnection need not pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(11-2) Australia, the rate at which interconnection is provided is determined by negotiation. Both negotiating parties have recourse to the regulator which will make a decision based on transparent criteria to ensure that rates are fair and reasonable in the circumstances.

(11-3) Australia, the regulator may resolve any dispute on what costs are relevant in determining rates.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options (11-4):

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services;

(b) the terms and conditions of an existing interconnection agreement; or

(c) through negotiation of a new interconnection agreement.

(11-4) For Australia, these options include arbitration.

Public Availability of Procedures for Interconnection Negotiations

3. Each Party shall ensure that applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

Public Availability of Terms and Conditions for Interconnection with Major Suppliers

4. Each Party shall ensure, where interconnection is provided under paragraph 2(a), that the rates, terms, and conditions are made publicly available.

Article 11.11. Resale

Each Party (11-5) shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates, (11-6) to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides 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.

(11-5) Australia may determine in accordance with its law and regulations which public telecommunications services must be offered for resale by major suppliers in accordance with paragraph 1, based on the need to promote competition or such other factors as the Party considers relevant.

(11-6) For the purposes of Article 11.11(a): 1) a Party may determine reasonable rates through any methodology it considers appropriate; and 2) wholesale rates, set pursuant to a Party's law and regulations, shall be considered reasonable.

Article 11.12. Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its territory provide suppliers of public telecommunications networks and services of the other Party access to network elements for the provision of public telecommunications networks or services on an unbundled basis, and on terms and conditions and at cost-oriented rates that are reasonable and non-discriminatory.

Article 11.13. Provisioning and Pricing of Leased Circuits

1. Each Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuit services that are public telecommunications networks or services in a reasonable period of time, on terms and conditions, and at rates, that are reasonable and non-discriminatory.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer such leased circuit services that are public telecommunications networks or services to enterprises of the other Party at capacity-based, cost-oriented prices.

Article 11.14. Co-location

1. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements on a timely basis and on terms, conditions and at cost-oriented rates that are reasonable and non-discriminatory.

2. 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 provide alternative solution, which may include facilitating virtual co-location, on a timely basis and on terms, conditions and at cost-oriented rates that are reasonable and non- discriminatory.

3. Each Party may determine, in accordance with its law and regulations, which premises in its territory are subject to paragraphs 1 and 2.

Article 11.15. Access to Poles, Ducts, Conduits, Transmission Towers, Underground Facilities and Rights of Way

Each Party shall maintain appropriate measures for the purpose of preventing major suppliers in its territory from denying access to poles, ducts, conduits, transmission towers, underground facilities and rights-of-way, or any other structures deemed necessary by the Party, owned or controlled by such major suppliers, to suppliers of public telecommunications networks or services of the other Party in a manner which would constitute anti-competitive practices.

Article 11.16. Denial of Access

Each Party shall ensure that any decision of the Party to deny access will be provided with a clear and detailed written explanation.

Section D. Regulatory Measures

Article 11.17. Independent Regulatory Bodies

1. Each Party shall ensure that any telecommunications regulatory body that it establishes or maintains is independent and

separate from, and not accountable to, any supplier of public telecommunications networks or services. To this end, each Party shall ensure that its telecommunications regulatory bodies do not hold a financial interest or maintain an operating role in any supplier of public telecommunications networks or services.

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 its regulatory body does not hold a financial interest in any supplier of public telecommunications networks or services, and that any financial interest that the Party holds in a supplier of a public telecommunications networks or services does not influence the decisions and procedures of its telecommunications regulatory body.

3. Each Party shall ensure that the decisions of, and procedures used by, its telecommunications regulatory bodies shall be fair and impartial and shall be made and implemented without undue delay.

Article 11.18. Flexibility In the Choice of Technology

Neither Party may prevent suppliers of public telecommunications networks or services from choosing the technologies they wish to use to supply their services, including packet-based services and commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests, including protection of the technical integrity of public telecommunications networks and services.

Article 11.19. 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 11.20. Licensing Process

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall make publicly available:

(a) all the licensing criteria and procedures it applies, including any standard terms and conditions of the licence;

(b) the time it normally requires to reach a decision concerning an application for a licence; and

(c) the terms and conditions of individual licences.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a licence.

3. Each Party shall ensure that licensing requirements for suppliers of telecommunications networks or services of the other Party are applied in a way that is not more burdensome than necessary.

Article 11.21. Allocation and Use of Scarce Telecommunications 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 assigned for specific government uses.

3. For greater clarity, measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are per se inconsistent with Article 9.5 (Market Access — Cross-Border Trade in Services Chapter), which is applied to Chapter 10 (Investment) through Article 9.2.2 (Scope and Coverage — Cross-Border Trade in Services Chapter). 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 networks or 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 current and future needs.

4. When making a spectrum allocation for non-governmental telecommunications networks or services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial non-governmental telecommunications networks or services.

Article 11.22. Enforcement

1. Each Party shall provide its relevant regulatory body with the authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 11.3 to 11.15 and Articles 11.20 to 11.23.

2. Such authority to enforce compliance shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, or the modification, suspension, and revocation of licences.

Article 11.23. Resolution of Telecommunications Disputes and Appeal Processes

Each Party shall ensure that:

Recourse to a telecommunications regulatory body

(a) enterprises of the other Party may seek timely 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 11.3 to 11.15 and Articles 11.20 to 11.23;

(b) suppliers of public telecommunications networks or services of the other Party that have requested interconnection with a major supplier in its territory may have recourse, within a reasonable and publicly available period of time after the supplier requests interconnection, to a national telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

Judicial review

(c) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an impartial and independent judicial authority; and

(d) the making of an application for judicial review shall not have the effect of delaying the coming into operation of the telecommunications regulatory body's decision or determination, or of suspending the operation of the decision or determination, unless otherwise determined by the relevant judicial body.

Article 11.24. Transparency

Further to Chapter 19 (Transparency), each Party shall ensure that:

(a) regulatory decisions, including the basis for such decisions, of its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

(b) its measures relating to public telecommunications networks or services are made publicly available, including:

(i) tariffs and other terms and conditions of service;

(ii) requirements for judicial review following a regulatory decision;

(iii) specifications of technical interfaces;

(iv) conditions for attaching terminal or other equipment to public telecommunications networks;

(v) notification, permit, registration, or licensing requirements, if any; and

(vi) measures of bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use.

Article 11.25. Industry Participation

Each Party shall facilitate consultation with suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of telecommunications policy, regulations and standards in a manner that is open to any participant in the telecommunications industry in the territory of that Party.

Article 11.26. International Standards

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services, and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Chapter 12. Financial Services

Article 12.1. Definitions

For the purposes of this Chapter:

(a) **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;

(b) **cross-border trade in financial services or cross-border supply of financial services** means the supply of a financial service:

(i) from the territory of one Party into the territory of the other Party;

(ii) in the territory of a Party by a person of that Party to a person of the other Party; or

(iii) by anational of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by an investment in that territory;

(c) **financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

(d) **financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

(e) **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

(i) direct insurance (including co-insurance):

(A) life;

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency;

(iv) service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

Banking and other financial services (excluding insurance)

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;

(ix) guarantees and commitments;

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

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

(B) foreign exchange;

(C) derivative products including, futures and options;

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

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion;

(xi) 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;

(xii) money broking;

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

(xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(f) **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;

(g) **investment** means "investment" as defined in Article 10.1(j) (Definitions — Investment Chapter), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(i) 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

(ii) 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 (i), is not an investment;

for greater certainty:

(iii) a loan to, or debt instrument issued by, a Party or a state enterprise is not an investment; and

(iv) 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 10.1(j) (Definitions — Investment Chapter);

(h) **investor of a Party** means an "investor of a Party" as defined in Article 2.1(0) (Definitions of General Application — General Definitions Chapter);

(i) **new financial service** means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

(j) **person of a Party** means "person of a Party" as defined in Article 2.1(t) (Definitions of General Application — General Definitions Chapter) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

(k) **public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

(l) **self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

Article 12.2. Scope and Coverage

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

(a) financial institutions of the other Party;

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

(c) cross-border trade in financial services.

2. Articles 9.10 (Denial of Benefits - Cross-Border Trade in Services Chapter), 10.10 (Transfers — Investment Chapter), 10.11 (Expropriation and Compensation — Investment Chapter), 10.12 (Special Formalities and Information Requirements — Investment Chapter) and 10.13 (Denial of Benefits — Investment Chapter) are hereby incorporated into and made a part of this Chapter mutatis mutandis (12-1). Section B of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 10.10 to 10.13, as incorporated in this Chapter. No other provision of Chapter 9 (Cross-Border Trade in Services) or Chapter 10 (Investment) shall apply to a measure described in paragraph 1.

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 subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

(12-1) The Parties understand that the provisions of Chapter 10 (Investment) hereby incorporated include, are subject to and shall be interpreted in conformity with Annexes 10-A to 10-F of that Chapter, as applicable.

Article 12.3. National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable 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 the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable 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 12.6.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.4. Most-favoured-nation Treatment

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

Article 12.5. Market Access for Financial Institutions

A Party shall not adopt or maintain, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations:

(i) on the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

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

(ii) on 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; (12-2) or

(iv) on 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.

(12-2) This subparagraph does not cover measures of a Party which limit inputs for the supply of financial services.

Article 12.6. Cross-border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 12-A.

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 the other Party located in the territory of the 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 Article as long as such definitions are not inconsistent with the obligations of 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 the other Party and of financial instruments.

Article 12.7. New Financial Services (12-3)

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new law or modify an existing law.

2. Notwithstanding Article 12.5(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where a Party requires authorisation to supply a new financial service, the decision shall be made within a reasonable time and authorisation may only be refused for prudential reasons.

(12-3) For greater certainty, a Party may, consistent with Article 12.3, prohibit a particular new financial service.

Article 12.8. 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 12.9. Senior Management and Boards of Directors

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.10. Non-conforming Measures

1. Articles 12.3, 12.4, 12.5, 12.6 and 12.9 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 Section 1 of its Schedule to Annex III of non-conforming measures;

(ii) a regional level of government, as set out by that Party in Section 1 of its Schedule to Annex III of non-conforming measures; 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:

(i) immediately before the amendment, with Articles 12.3, 12.4 and 12.9; or

(ii) on the date of entry into force of the Agreement, with Articles 12.5 and 12.6.

2. Articles 12.3 to 12.6 and Article 12.9 do not apply to any non-conforming measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, in accordance with Section 2 of its Schedule to Annex III of non- conforming measures.

3. Annex 12-B sets out certain specific commitments by each Party.

4. Where a Party has set out a non-conforming measure to Articles 9.3 (National Treatment — Cross-Border-Trade in Services Chapter), 9.4 (Most-Favoured-Nation Treatment — Cross-Border Trade in Services Chapter), 9.5 (Market Access — Cross- Border Trade in Services Chapter), 10.3 (National Treatment — Investment Chapter), 10.4 (Most-Favoured-Nation Treatment — Investment Chapter), or 10.8 (Senior Management and Boards of Directors — Investment Chapter) in its Schedule to Annex Tor Annex II, the non-conforming measure shall be deemed to constitute a non- conforming measure to Articles 12.3, 12.4, 12.5, 12.6 or 12.9, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the non- conforming measure is covered by this Chapter.

Article 12.11. Exceptions

1. Nothing in this Chapter or Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment), Chapter 11 (Telecommunications), including specifically Article 11.2.2 (Scope and Coverage — Telecommunications Chapter), Chapter 14 (Competition Policy) or Chapter 16 (Electronic Commerce) of this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons (12-4), 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 obligations under such provisions. (12-5)

2. Nothing in this Chapter or, Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment), Chapter 11 (Telecommunications), including specifically Article 11.2.2 (Scope and Coverage — Telecommunications Chapter), Chapter 14 (Competition Policy) or Chapter 16 (Electronic Commerce) of this Agreement applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.7 (Performance Requirements — Investment Chapter) with respect to measures covered by Chapter 10 (investment), or under Article 10.10 (Transfers — Investment Chapter).

3. Notwithstanding Article 10.10 (Transfers — Investment Chapter), 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 a 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 as covered by this Chapter.

(12-4) 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.

(12-5) The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, such as ministries or departments of labour, in addition to those who have regulatory responsibilities with respect to financial institutions.

Article 12.12. Recognition

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with the non-Party. 2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other 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 Parties.

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.13. Transparency

1. The Parties recognise that transparent regulations and policies and reasonable, objective and impartial administration governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. In lieu of Article 19.3 (Publication — Transparency Chapter), 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 the other Party a reasonable opportunity to comment on such proposed regulations.

4. Each Party's regulatory authorities shall make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

6. A 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 the other 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 endeavour to make the decision within a reasonable time thereafter.

7. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application in writing.

8. 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.

9. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

10. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

11. 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.

Article 12.14. Self-regulatory Organisations

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

Article 12.15. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 12.16. Financial Services Committee

1. The Parties hereby establish a Financial Services Committee.

2. The Committee may meet at the request of either Party to discuss any matter arising under this Agreement that affects financial services.

3. The Committee shall be headed by officials of the authorities specified in Amnex 12-C.

Article 12.17. Dispute Settlement

1. Chapter 21 (Dispute Settlement Chapter) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. A Party may request in writing consultations with the other Party regarding any matter on the implementation, interpretation, application or operation of this Chapter.

3. Consultations under this Article shall be headed by officials of the authorities specified in Annex 12-C.

4. Upon initiation of consultations, the Parties shall provide information and give confidential treatment to the information exchanged in accordance with Article 22.5 (Disclosure of Information — General Provisions and Exceptions Chapter).

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

6. 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 the Parties.

7. Panelists on panels constituted for disputes arising under this Chapter shall meet the requirements set out in Article 21.7 (Compositions of Arbitral Panels — Dispute Settlement Chapter) and shall also have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

8. Consistent with Article 21.12 (Non-Implementation — Compensation and Suspension of Concessions or other Obligations — Dispute Settlement Chapter), in any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure 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 measures 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 12.18. Investment Disputes In Financial Services

1. Where an investor of one Party submits a claim under Article 10.16 (Submission of a Claim to Arbitration — Investment Chapter) to arbitration under Section B of Chapter 10 (Investment) against the other Party and the respondent invokes Article 12.11, on the request of the respondent, the tribunal shall refer the matter in writing to the Parties for discussions under Article 12.16. Subject to paragraph 4, the tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Parties shall decide whether reliance on Article 12.11 is justified. The Parties shall transmit a copy of their decision to the tribunal. The decision shall be binding on the tribunal.

3. Where the Parties have not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may institute dispute settlement proceedings under Article 12.17. The panel shall be constituted in accordance with Article 12.17.

4. Where no request for dispute settlement proceedings has been made within 10 days of the expiration of the 60 day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

5. Where the parties resolve or seek resolution of the issues through dispute settlement proceedings, the decision of the arbitral panel shall be binding on the tribunal.

Annex 12-A. Cross-border trade

Insurance and insurance-related services

1. For Australia, Article 12.6.1 applies to the cross-border supply of or trade in financial services as defined in Article 12.1(b)G@) with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising there from; and

(ii) goods in international transit;

(b) reinsurance and retrocession, and services auxiliary to insurance as referred to in Article 12.1(e)(ii) and (iv); and

(c) insurance intermediation, such as brokerage and agency as referred to in Article 12.1(e)(iii) in relation to the services in subparagraphs (a) and (b).

2. For Chile, Article 12.6.1 applies to the cross-border supply of or trade in financial services as defined in Article 12.1(b)G@) with respect to:

(a) insurance of risk relating to:

(i) international maritime transport and international commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving there from; and

(ii) goods in international transit;

(b) brokerage of insurance of risks relating to subparagraph (a)(i) and (a)(ii); and

(c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial, and risk assessment.

Banking and other financial services (excluding insurance)

3. For Australia, Article 12.6.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in Article 12.1(e)(xv), and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in Article 12.1(e)(xvi).

4. For Chile, Article 12.6.1 applies with respect to:

(a) provision and transfer of financial information as described in Article 12.1(e)(xv);

(b) financial data processing as described in Article 12.1(e)(xv),subject to prior authorisation from the relevant regulator, as required; (12-6) and

(c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in Article 12.1(e)(xvi).

5. Notwithstanding subparagraph 4(c), in the event that after the date of entry into force of this Agreement Chile allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.3.3) to cross-border financial service suppliers of Australia. Nothing in this commitment shall be construed to prevent Chile from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross- border financial service suppliers.

6. It is understood that Chile's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require Chile to permit the public offering of securities (as defined under its relevant law) in it's territory by cross-border suppliers of Australia who supply or seek to supply such investment advisory services. Chile may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

(12-6) It is understood that where the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

Annex 12-B. Annex on specific commitments

Section A. Pension Funds Management

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section 2, referring to social services, Chile, with respect to the establishment by an investor of Australia:

(a) shall permit such an investor that does not own or control an Administradora de Fondos de Pensiones under Decreto Ley 3.500 to establish or acquire in Chile an Administradora de Fondos de Pensiones to supply the financial services that such an institution may supply under Chile's domestic law at the time of establishment, without the imposition of numerical restrictions or of an economic needs test; and

(b) as required by its domestic law, shall not establish arbitrary differences with respect to such an investor in Administradora de Fondos de Pensiones under Decreto Ley 3.500.

2. No other modification of the effect of the non-conforming measures referring to social services is intended or shall be construed under this paragraph.

3. The specific commitments of Chile under paragraph 1 are subject to the headnotes and non-conforming measures set forth in Annex III of Chile with respect to financial services.

4. For the purposes of this Annex:

(a) an "investor of Australia" means an investor of Australia engaged in the business of providing banking and other financial services (excluding insurance) in Australia; and

(b) "numerical restrictions" means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

Section B. Voluntary Savings Plans; Non-discriminatory Treatment of Australian Investors

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex II, Section 2, referring to social services, with respect to voluntary savings pension plans established under Ley 19.768, Chile shall extend the obligations of Article 12.3.1 and 12.3.2 and of Article 12.4 to financial institutions of Australia, investors of Australia, and investments of such investors in financial institutions established in Chile.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section 2, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to Australian investors in Administradoras de Fondos de Pensiones under Decreto Ley 3.500.

Section C. Portfolio Management

1. A Party shall allow a financial institution (other than a trust company or insurance company) organised outside its territory to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.2 and to Article 12.6.3, regarding the right to require registration, without prejudice to other means of prudential regulation.

2. Notwithstanding paragraph 1, a Party may require the collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds it manages.

3. For the purposes of paragraph 1 and 2, a collective investment scheme means:

(a) in Australia, a managed investment scheme as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001 (Cth), or an entity that:

(i) carries on a business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested; and

(b) in Chile, the following fund management companies subject to supervision by the Superintendencia de Valores y Seguros:

(i) Compañías Administradoras de Fondos Mutuos (Decreto Ley 1.328 de 1976);

(ii) Compañías Administradoras de Fondos de Inversión (Ley 18.815 de 1989);

(iii) Compañías Administradoras de Fondos de Inversion de Capital Extranjero (Ley 18.657 de 1987);

(iv) Compañías Administradoras de Fondos para la Vivienda (Ley 18.281 de 1993); and

(v) Compañías Administradoras Generales de Fondos (Ley 18.045 de 1981).

Annex 12-C. Authorities responsible for financial services

The authority of each Party responsible for financial services shall be:

(a) for Australia, the Department of the Treasury, or its successor.

(b) for Chile, the Ministerio de Hacienda.

Chapter 13. Temporary Entry for Business Persons

Article 13.1. Definitions

For the purposes of this Chapter:

(a) **business person** means a national of a Party who is engaged in trade in goods, the supply of services, or the conduct of investment activities;

(b) **business visitor** means a national of a Party who is seeking to travel to the other Party for business purposes, including

for investment purposes, whose remuneration and financial support for the duration of the visit is derived from sources outside the granting Party, and who is not engaged in making direct sales to the general public or in supplying goods or services themselves.

For the purposes of qualifying under this category, a national seeking temporary entry under the present category, shall present (13-1)

(13-1) In addition to the requirements in Article 13.1(b)(i) to (iii), temporary entry will only be granted to business persons who also meet the requirements of a Party's immigration measures.

(i) proof of nationality of a Party;

(ii) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(iii) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labour market.

Each Party shall provide that a business person may satisfy the requirements of subparagraph (b)(iii) by demonstrating that:

(A) the source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(B) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

(c) **contractual service supplier** means a national:

(i) who has high level technical or professional qualifications, skills and experience and:

(A) who is an employee of an enterprise of a Party that has concluded a contract for the supply of a service within the other

Party and which does not have a commercial presence within that Party; or

(B) who is engaged by an enterprise lawfully and actively operating in the other Party in order to supply under a contract within that Party; and

(ii) who is assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in the granting Party for their nominated occupation.

Nothing in (A) or (B) above shall preclude a Party from requiring an employment contract between the national and the enterprise operating in the granting Party.

(d) **dependent** means:

(ii) For Australia, a person who meets the requirements for a dependent or dependent child as defined in the Migration Regulations 1994.

(ii) For Chile, a family member who lives with the business person, including the parents, children and the concubine.

(e) **executive** means a national who primarily directs the management of an enterprise, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the enterprise. An executive would not directly perform tasks related to the actual provision of the service or the operation of the enterprise.

(h) **granting Party** means a Party who receives an application for temporary entry from a national of the other Party who is covered by Article 13.2.

(g) **immigration formality** means a visa, employment pass, or other document or electronic authority granting a national of one Party the right:

(i) in the case of business visitors, to enter and visit the granting Party;

(ii) in the case of executives and their accompanying spouses, intra- corporate transferees and their accompanying spouses and contractual service suppliers and their accompanying spouses, to enter, reside and work in the granting Party; or

(iii) in the case of dependents of executives, intra-corporate transferees and contractual service suppliers, to enter and reside in the territory of the granting Party.

(h) **immigration measure** means a measure affecting the entry and sojourn of aliens.

(i) **intra-corporate transferee** means an employee of an enterprise of a Party established in the territory of the other Party through a branch, subsidiary or affiliate which is lawfully and actively operating in that Party, who is transferred by that enterprise to fill a position in the branch, subsidiary or affiliate of the enterprise in the granting Party, and who is:

(i) a **manager** which means a national who will be responsible for the entire or a substantial part of the operations of the enterprise in the granting Party, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or

(ii) a **specialist** which means a national with advanced trade, technical or professional skills. The person seeking entry must be assessed as having the necessary qualifications or alternative credentials accepted as meeting the granting Party's domestic standards for the relevant occupation.

For the purposes of qualifying under this category, a national seeking temporary entry under the present category, shall present (13-2)

(A) proof of nationality of a Party;

(B) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(C) documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

(j) **spouse** means:

(i) For Australia, a person who meets the requirements for a spousal relationship as defined in the Migration Regulations 1994.

(ii) For Chile, a person who meets the requirements for a spousal relationship under Chilean domestic laws and regulations.

(k) **temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

(13-2) In addition to the requirements in Article 13.1(i)(A) to (C), temporary entry will only be granted to business persons who also meet the requirements of a Party's immigration measures.

Article 13.2. Scope and Coverage

1. This Chapter shall apply to measures affecting the movement of nationals of a Party into the territory of the other Party where such persons are:

(a) business visitors;

(b) contractual service suppliers;

(c) executives of a business headquartered in a Party, establishing a branch or subsidiary of that business in the other Party; or

(d) intra-corporate transferees.

2. This Chapter does not apply to measures affecting nationals seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, nationality, permanent residence, or employment on a permanent basis.

Article 13.3. General Obligations

1. Each Party shall apply expeditiously its measures relating to the provisions of this Chapter so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of nationals of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of nationals across, its borders provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter and Chapter 9 (Cross-Border Trade in Services).

3. The sole fact of requiring nationals to meet eligibility requirements prior to entry to a Party shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter and Chapter 9 (Cross-Border Trade in Services).

4. Any measure regarding temporary entry of business persons adopted and maintained by a Party at its own initiative or as a result of an agreement between the Parties, that provides for more liberal access for and/or treatment of business persons covered by this Chapter, shall be accorded to business persons covered by this Chapter. However, with respect to such measures adopted or maintained by a Party at its own initiative, any more liberal access and/or treatment under such measures shall only be accorded for so long as the measures are in place.

Article 13.4. Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons, including spouses and dependents of intra-corporate transferees, who are otherwise qualified for entry under applicable measures including those relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 13-A.

2. Each Party shall ensure that fees charged by its competent authorities on applications for an immigration formality do not constitute an unjustifiable impediment to the movement of nationals under this Chapter.

3. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorising the temporary entry.

Article 13.5. Provision of Information

1. Each Party shall:

(a) make publicly available explanatory material on all relevant measures which pertain to or affect the operation of this Chapter, including any new or changed measures;

(b) no later than six months after the date of entry into force of this Agreement provide the other Party with a consolidated document describing the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them; and

(c) maintain appropriate mechanisms to respond to inquiries from the other Party, and interested persons of the other Party, regarding measures affecting the temporary entry and temporary stay of nationals of the other Party.

2. Each Party shall collect and maintain, and make available upon request to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documents.

Article 13.6. Consultations

1. The Parties agree to consult on any issue raised by a Party that relates to this Chapter. Such consultations may include:

(a) consideration of suggestions to further facilitate temporary entry of business persons;

(b) consideration of the development of common criteria and interpretations for the implementation of this Chapter; and

(c) any concerns regarding a refusal to grant temporary entry under this Chapter.

2. Consultations shall include officials from the Parties' immigration authorities.

Article 13.7. Dispute Settlement

1. A Party may not initiate proceedings under Chapter 21 (Dispute Settlement) regarding a refusal to grant temporary entry

under this Chapter or a particular case arising under Article 13.3 unless:

(a) the matter involves a pattern of practice;

(b) the business person has exhausted the available domestic remedies regarding the particular matter; and

(c) the Parties have undertaken consultations in accordance with Article 13.6.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted where there is undue delay in the remedial process which is attributable to the Party in which the process is undertaken.

Article 13.8. Relation to other Chapters

1. Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 20 (Institutional Arrangements), 21 (Dispute Settlement), and 23 (Final Provisions), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 13.9. Application of Regulations

1. To the extent possible, each Party shall, on request, provide to interested persons a concise statement addressing comments received on proposed and existing regulations relating to the temporary entry of business persons.

2. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously complete applications for immigration formalities received from nationals of the other Party covered by Article 13.2, including further immigration formality requests.

3. Each Party shall upon request, and within a reasonable period after a complete application by a national covered by Article 13.2 requesting temporary entry is lodged, notify the applicant of:

(a) receipt of the application;

(b) the status of the application; and

(c) the decision concerning the application, including, if approved, the period of stay and other conditions; or if refused, the reasons for refusal and any avenues for merits review.

Annex 13-A. Temporary entry for business persons

In the case of Chile:

(a) Business persons who enter Chile under any of the categories set out in Article 13.2, including spouses and dependants of intra-corporate transferees, shall be deemed to be engaged in activities which are in the country's interest.

(b) Business persons who enter Chile under any of the categories set out in Article 13.2 and are issued a temporary visa shall have that temporary visa extended for subsequent periods provided the conditions on which it is based remain in effect, without requiring that person to apply for permanent residence.

(c) When a national:

(i) has been granted the right to temporary entry under Article 13.4 for longer than 12 months; and

(ii) has a spouse;

Chile shall, upon application by an accompanying spouse of a national of Australia who meets Chile's criteria for the grant of an immigration formality, grant that accompanying spouse the right of temporary entry, stay, work and movement, for an equal period to that of the national.

(d) Business persons who enter Chile may also obtain an identity card for foreigners.

In the case of Australia:

For the purposes of this Section of the Annex:

service seller means a national who is a sales representative of a service supplier of that Party who is seeking temporary entry to the other Party for the purpose of negotiating, or entering into, agreements for the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly.

Short Term Temporary Entry

(a) Australia shall, upon application by a business visitor of Chile who meets Australia's criteria for the grant of an immigration formality, grant that business visitor, through a single immigration formality, the right of temporary entry to, and stay and movement in, Australia, consistent with the purpose of the visit, for a period of up to 90 days. A business visitor of Chile who is a service seller may stay for a period of up to 12 months.

Long Term Temporary Entry

(b) Australia shall, upon application by a contractual service supplier, an executive or an intra-corporate transferee, who is a national of Chile who meets Australia's criteria for the grant of an immigration formality, grant that person, through a single immigration formality, the right of temporary entry to, and stay, work and movement in, Australia. These rights shall be granted for an initial period of time, sufficient to supply relevant services and consistent with the purpose of the visit, for:

(i) an intra-corporate transferee, who meets the definition of an intra-corporate transferee and who is a manager, for a period of up to four years, with the possibility of further stay;

(ii) an intra-corporate transferee, who meets the definition of an intra-corporate transferee and who is a specialist, for a period of up to two years, with the possibility of further stay; and

(iii) a contractual service supplier for a period of up to one year, with the possibility of further stay.

(c) When a national:

(i) has been granted the right to temporary entry under Article 13.4 for longer than 12 months; and

(ii) has a spouse;

Australia shall, upon application by an accompanying spouse of a national of Chile who meets Australia's criteria for the grant of an immigration formality, grant that accompanying spouse the right of temporary entry, stay, work and movement, for an equal period to that of the national.

Chapter 14. Competition Policy

Article 14.1. Definitions

For the purposes of this Chapter:

(a) **competition authority** means:

(i) for Australia, the Australian Competition and Consumer Commission (ACCC) or its successor; and

(ii) for Chile, the Fiscalia Nacional Económica or its successor;

(b) **competition law** means:

(i) for Australia, the Trade Practices Act 1974 (excluding Part X) and any regulations, made under that Act, as well as any amendments thereto; and

(ii) for Chile, Decree Law No. 211 of 1973 and any implementing regulations, as well as any amendments thereto;

(c) **anticompetitive activity** means public or private business conduct or transactions that adversely affect competition, such as:

(i) anticompetitive horizontal arrangements between competitors;

(ii) anticompetitive unilateral conduct;

(ii) anticompetitive vertical arrangements; and

(iv) anticompetitive mergers and acquisitions;

(d) **enforcement activity** means any application of competition law by way of investigation or proceeding conducted by a Party, but shall not include research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition law;

(e) **enterprise with special or exclusive right**s means an enterprise to which a Party has granted special or exclusive rights in its purchases or sales involving either imports or exports;

(f) **designate** means, whether formally or in effect, to establish, designate, or authorise a monopoly or to expand the scope of a monopoly to cover an additional good or service;

(g) **monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(h) **non-discriminatory treatment** means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

(i) **in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry.

Article 14.2. Objectives

1. Recognising that anticompetitive practices have the potential to restrict bilateral trade and investment, the Parties believe that proscribing anticompetitive activities and implementing policies that promote economic efficiency and consumer welfare will help secure the benefits of this Agreement.

2. With a view to preventing distortions or restrictions of competition which may affect trade in goods or services between them, the Parties shall give particular attention to anticompetitive activities.

3. The Parties agree, within their existing domestic legal frameworks, to coordinate on the implementation of competition laws. This will include notification, consultation and exchange of non-confidential information.

4. The Parties acknowledge the importance of contributing to the development of best practice in the area of competition policy in global and plurilateral fora.

Article 14.3. Competition Law and Anticompetitive Activities

1. Each Party shall maintain or adopt measures consistent with its domestic law to proscribe anticompetitive activities and take appropriate action with respect thereto, recognising that such measures will help realise the objectives of this Agreement. Each Party shall ensure that a person subject to the imposition of a sanction or remedy for violation of such measures is provided with the opportunity to be heard and to present evidence, and to seek review of such sanction or remedy in a court or independent tribunal of that Party.

2. Each Party shall ensure that all businesses operating in its territory are subject to its competition laws. Parties may exempt businesses or sectors from the application of competition laws, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest. Where a Party considers such an exemption might adversely affect its interests, it may seek consultations pursuant to Article 14.7.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws. In enforcing its competition laws, each Party's competition authority will treat nationals of the other Party no less favourably than it treats its own nationals in like circumstances.

4. The Parties recognise the importance of effective competition law enforcement in the free trade area. To this end, the Parties shall cooperate, on mutually agreed terms, on the enforcement of competition laws.

Article 14.4. Enterprises with Special or Exclusive Rights, Including Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from granting to an enterprise special or exclusive rights or designating a monopoly provided that this is done in accordance with the Party's domestic law.

2. Recognising that enterprises with special or exclusive rights, including designated monopolies, should not operate in a manner that creates obstacles to trade and investment, each Party shall ensure that any enterprise with special or exclusive tights, including any privately or publicly designated monopoly:

(a) acts solely in accordance with commercial considerations in its exercise of special or exclusive rights including, where applicable, the purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its grant or designation that are not inconsistent with subparagraph (b) or (c);

(b) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its exercise of special or exclusive rights including, where applicable, the purchase or sale of the monopoly good or service in the relevant market;

(c) does not use its special or exclusive rights including, where applicable, its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolised market in its territory, where such practices adversely affect covered investments; and

(d) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such an enterprise with special or exclusive rights or designated monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the exercise of special or exclusive rights including, where applicable, the monopoly good or service, such as the power to grant import or export licences, approve commercial transactions, or impose quotas, fees or other charges.

3. This Article does not apply to government procurement.

4. Where a Party grants to an enterprise special or exclusive rights or designates a monopoly and it determines that the grant or designation may affect the interests of the other Party, the Party shall endeavour to:

(a) at the time of the grant or designation introduce such conditions on the exercise of special or exclusive rights including, where applicable, the operation of the monopoly so as to minimise any adverse affect on the other Party, as communicated by that Party, under Article 14.7; and

(b) provide written notification, in advance wherever possible, to the other Party of the grant or designation.

Article 14.5. State Enterprises

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise, provided that this is done in accordance with the Party's domestic law.

2. Each Party shall ensure that any state enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services.

4. Each Party shall take reasonable measures to ensure it does not provide any competitive advantage to any government-owned business simply because it is government owned. This Article applies to the business activities of government-owned businesses and not to their non-business, non-commercial activities.

Article 14.6. Notifications

1. Each Party, through its competition authority, but subject to its laws and regulations, shall notify the competition authority of the other Party of an enforcement activity where it determines that the enforcement activity:

(a) is liable to substantially affect the other Party's important interests;

(b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or

(c) concerns anticompetitive acts taking place principally in the territory of the other Party.

2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, notifications shall take place at an early stage of the procedure.

3. The notifications provided for in paragraph 1 should include sufficient detail to permit the other Party to evaluate its interests.

4. The Parties undertake to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

Article 14.7. Consultations

1. If the competition authority of a Party considers that an investigation or proceeding being conducted by the competition authority of the other Party may adversely affect its important interests it may transmit its views on the matter to the other Party's competition authority.

2. A Party, through its competition authority, may request consultations regarding the issues addressed in paragraph 1 as well as any other matter covered by this Chapter. The requesting Party shall indicate the reasons for the request and whether any procedural time limit or other constraints require that consultations be expedited. Such consultations shall be without prejudice to the right of a Party so consulted to take any measure under its competition laws it deems appropriate.

Article 14.8. Exchange of Information, Transparency and Confidentiality

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange information.

2. With the objective of making their competition policies as transparent as possible, each Party shall ensure that its laws, regulations and procedures addressing competition shall be in writing and shall be published or otherwise made publicly available.

3. On the request of a Party, the other Party shall endeavour to make available public information concerning:

(a) the enforcement of its measures proscribing anticompetitive activities;

(b) its state enterprises, and enterprises with special or exclusive rights, including designated monopolies, provided that requests for such information shall indicate the entities involved, specify the particular goods and/or services and markets concerned, and include indicia that these entities may be engaging in practices that may hinder trade or investment between the Parties; and

(c) exemptions to its measures proscribing anticompetitive activities, provided that requests for such information shall specify the particular goods and/or services and markets to which the request relates.

4. Any information or documents exchanged between the Parties on a confidential basis pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party which provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party where possible before such disclosure is made or otherwise at the earliest practicable time.

5. The Party providing such confidential information shall furnish non- confidential summaries thereof if requested by the other Party. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. When a Party indicates that such confidential information is not susceptible to a public summary and where such information is submitted to a judicial authority, it shall be at the discretion of that judicial authority whether to consider such information.

Article 14.9. Dispute Settlement

1. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

2. In the event that a breach of this Chapter by an enterprise exercising any regulatory, administrative or other governmental authority that the Party has delegated to it also constitutes a breach of another Chapter of this Agreement, this Article shall not preclude recourse by a Party to dispute settlement for the breach of the other Chapter by such an enterprise.

Article 14.10. Technical Assistance

The Parties may provide each other technical assistance in order to take advantage of their respective experience and to strengthen the implementation of their competition laws and policies.

Chapter 15. Government Procurement

Article 15.1. Definitions

For the purposes of this Chapter:

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

(b) **covered procurement** means a government procurement of goods, services including construction services, or both:

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

(ii) for which the value, as estimated in accordance with Article 15.5 equals or exceeds the relevant threshold specified in Annex 15-A;

(iii) that is conducted by a procuring entity;

(iv) is not excluded from coverage by this Agreement; and

(v) subject to the conditions specified in Annex 15-A;

(c) **in writin**g or **written** means any expression of information in words, numbers, or other symbols, including electronic expressions, that can be read, reproduced, and stored;

(d) **international standard** means a standard that has been developed in conformity with the document referenced in Article 7.5 (International Standards — Technical Regulations, Standards and Conformity Assessment Procedures Chapter);

(e) **limited tender procedure** means a procurement method where the procuring entity contacts a supplier or suppliers of its choice in accordance with Article 15.15;

(f) **multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list and that the procuring entity intends to use more than once;

(g) **offset** means any condition or undertaking that encourages local development or improves a Party's balance of payments accounts such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements;

(h) **open tender procedure** means those tendering procedures in which all interested suppliers may submit a tender;

(i) **procuring entit**y means an entity listed in Annex 15-A;

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

(k) **selective tender procedure** means those tendering procedures in which the procuring entity determines the suppliers that it will invite to submit tenders;

(l) **supplier** means a person or group of persons that provides or could provide goods or services to a procuring entity; and

(m) **technical specification** means a tendering requirement that:

(i) sets out the characteristics of:

(A) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(B) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions;

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service; or

(ii) sets out conformity assessment procedures prescribed by a procuring entity.

Article 15.2. Scope and Coverage

1. This Chapter applies to any measure adopted or maintained by a Party regarding covered procurement.

2. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance provided by a Party, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements;

(b) procurement for the direct purpose of providing foreign assistance;

(c) procurement funded by international grants, loans or other assistance to the extent that the provision of such assistance is subject to conditions inconsistent with this Chapter;

(d) public employment contracts;

(e) procurement of a financial service as defined in Article 12.1(e) (Definitions — Financial Services Chapter).

(f) procurement of goods and services by a procuring entity from another entity of the same Party, or between a procuring entity of a Party and a regional or local government of that Party, where no other supplier has been asked to tender;

(g) procurement of goods and services outside the territory of the procuring Party, for consumption outside the territory of the procuring Party;

(h) procurement funded by grants and/or sponsorship payments received from a person other than a procuring entity of a Party;

(i) procurement of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities; or

(j) the procurement or rental of land, existing buildings or other immovable property or rights thereon where not part of an arrangement for procurement of construction services.

Article 15.3. General Obligations

1. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

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

3. Each Party shall apply to covered procurements of goods the rules of origin that it applies in the normal course of trade to those goods.

Article 15.4. National Treatment and Non-discrimination

1. Each Party shall accord to the goods, services and suppliers of the other Party treatment no less favourable than the most favourable treatment the Party accords to its own goods, services and suppliers.

2. Neither Party may:

(a) treat a locally established supplier less favourably 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 the other Party.

3. For greater clarity, all orders under contracts awarded for covered procurement, such as framework agreements or panel

arrangements shall be subject to paragraphs 1 and 2.

4. The provisions of paragraphs 1 and 2 shall not apply to measures concerning customs duties and other charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges or other import regulations, including restrictions and formalities, and measures affecting trade in services other than measures governing covered procurement.

Article 15.5. Valuation of Contracts

1. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the maximum total value of the procurement, inclusive of optional purchases; and

(b) without prejudice to paragraph 2, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration.

2. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, a procuring entity shall estimate the value on the basis of objective criteria or apply the following basis of valuation:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract subparagraph (b) shall be used.

3. Where the total estimated maximum value of a procurement over its entire duration is not known the procurement shall be a covered procurement, unless otherwise excluded under this Agreement.

Article 15.6. Prohibition of Offsets

A Party shall not seek, take account of, impose, or enforce offsets at any stage of a covered procurement.

Article 15.7. Publication of Procurement Measures

Each Party shall promptly publish its procurement laws, regulations, procedures and policy guidelines of general application relating to covered procurements, and any changes or additions to this information.

Article 15.8. Publication of Notice of Intended Procurement

1. In an open tendering procedure, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") in such a way as to be readily accessible to any interested supplier of the other Party for the entire period established for tendering.

2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the procuring entity, the address where suppliers may obtain all documents relating to the procurement and the time limits for submission of tenders.

3. Where, in a selective tendering procedure, a procuring entity publishes a notice inviting applications for participation in a procurement, that notice shall be published in such a way as to be readily accessible to any interested supplier of the other Party.

Article 15.9. Procurement Plans

Each Party shall encourage its procuring entities to publish, prior to, or as early as possible in, each fiscal year, a notice regarding their procurement plans for that fiscal year that includes a description of each planned procurement and indicate the expected time of commencement of the related tender process.

Article 15.10. Time Limits

1. A procuring entity shall prescribe time limits for tendering that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement and the efficient operation of the procurement process. The time allowed for the submission of tenders shall not be set with the intention of causing a competitive disadvantage for suppliers of the other Party, or suppliers offering goods or services of the other Party, in submitting tenders in accordance with the requirements set out in the tender documentation.

2. Except as provided for in paragraphs 3 and 4, a procuring entity shall provide that the final date for the submission of tenders shall not be less than 30 days:

(a) from the date on which the notice of intended procurement is published; or

(b) where the procuring entity has used selective tendering, from the date on which the entity invites suppliers to submit tenders.

3. Under the following circumstances, a procuring entity may establish a time limit for tendering that is less than 30 days, provided that such time limit is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than 10 days:

(a) where the procuring entity published a separate notice, including a notice of planned procurement under Article 15.9 at least 30 days and not more than 12 months in advance, and such separate notice contains:

(i) a description of the procurement;

(ii) ‘the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement; and

(iii) the address from which documents relating to the procurement may be obtained;

(b) where the procuring entity procures commercial goods or services that

are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes, including goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

(c) in the case of second or subsequent publication of notices for procurement of a recurring nature;

(d) where a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2; or

(e) when the intended procurement is for goods or services which can be easily and objectively specified and which reasonably imply less effort in the preparation and submission of responsive tenders.

4. A procuring entity may reduce the time limit for submission of a tender by up to five days when it:

(a) publishes a notice of intended procurement in an electronic medium; or

(b) in the context of a selective tendering procedure, issues an invitation to tender via an electronic medium;

and provides, to the extent practicable, the tender documentation via an electronic medium.

5. The application of paragraph 4 shall in no case result in the time limit for submissions being reduced to less than 10 days.

6. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline.

Article 15. Tender Documentation

1. A procuring entity shall provide on request to any supplier participating in a covered procurement or promptly publish, tender documentation that includes all the 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.

2. Where a procuring entity, during the course of a covered procurement, modifies a notice or tender documentation provided to participating suppliers, it shall publish or transmit all such modifications in writing:

(a) to all suppliers that are participating in the procurement at the time the notice or tender documentation is modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and

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

3. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in the procurement. A procuring entity may establish a reasonable time limit to request the relevant information.

4. Procuring entities shall not provide information with regard to a specific procurement in a manner which would have the effect of giving a potential supplier an unfair advantage over competitors.

Article 15.12. 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. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:

(a) specify the technical specifications, wherever appropriate, in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on relevant international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose greater burdens than the use of a recognised national standard.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trade mark or trade name, patent, copyright, design or type, specific origin or producer or supplier, unless there is no other sufficiently precise or intelligible way of otherwise 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. Notwithstanding paragraph 4, a procuring entity may:

(a) conduct market research in developing specifications for a particular procurement; or

(b) allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services;

provided it would not give any supplier an unfair advantage over other suppliers.

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

Article 15.13. Conditions for Participation

1. A Party shall limit any conditions for participation in a covered procurement to those that ensure the supplier's capability to fulfil the requirements of the procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a Party:

(a) shall evaluate the capabilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(b) shall base its determination solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;

(c) may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the

territory of that Party; and

(d) may require prior experience where relevant to meet the requirements of the procurement.

3. Nothing in this Article shall preclude a Party from excluding a supplier froma procurement on grounds such as:

(a) bankruptcy; (b) false declarations; or

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract.

4. Where a Party requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement that Party shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published sufficiently in advance of the procurement to allow for interested suppliers, including suppliers of the other Party, to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration or qualification procedures.

5. The process of, and the time required for, registering or qualifying suppliers shall not be used in order to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent such suppliers from being considered for a particular procurement.

6. A Party may establish a multi-use list provided that it publishes, annually or continuously, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the requirements to be satisfied by suppliers;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and obtain all relevant documents relating to the list; and

(d) deadlines for submission of applications for inclusion on that list, where applicable.

7. A Party that maintains a multi-use list shall include on the list all suppliers that satisfy the requirements set out in the notice referred to in paragraph 6 within a reasonably short time.

Article 15.14. Tendering Procedures

1. A procuring entity shall only use open or selective tendering procedures consistent with the provisions of this Chapter, except as provided for in Article 15.15.

2. A procuring entity may use selective tendering procedures in accordance with Article 15.4 and the procurement laws, regulations, procedures and policies of its Party.

3. To ensure effective competition under selective tendering procedures, a procuring entity shall invite tenders from the largest number of domestic suppliers and suppliers of the other Party that is consistent with the efficient operation of the procurement system. It shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

Article 15.15. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition, to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering procedures.

2. When a procuring entity applies limited tendering it may choose, according to the nature of the procurement, not to apply Articles 15.8, 15.10, 15.11, 15.12, 15.13, 15.14, 15.16.1 and 15.16.3 to 15.16.6. A procuring entity may use limited tendering only under the following circumstances:

(a) where, in response to a prior notice, invitation to participate, or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation; or

(iii) no suppliers satisfied the conditions for participation;

and the procuring entity does not substantially modify the essential requirements of the procurement;

(b) where, for works of art, or for reasons connected with the protection of exclusive 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 or its authorised agent 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 procuring 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 intended for limited trial or developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development;

(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 unforeseen 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 per cent of the amount of the initial contract;

(g) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following use of open tendering or selective tendering in accordance with this Chapter, and for which the procuring entity has indicated in the notice of intended procurement concerning the initial construction service that limited tendering procedures might be used in awarding contracts for such new construction services;

(h) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers;

(i) where a contract is awarded to the winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter, and

(ii) the contest is judged by an independent jury with a view toa design contract being awarded to the winner; or

(j) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the goods or services could not be obtained in time by means of an open or selective tendering procedure.

3. A procuring entity shall maintain a record or prepare a written report providing specific justification for any contract awarded by means other than open or selective tendering procedures, as provided for in this Article.

Article 15.16. Treatment of Tenders and Awarding of Contracts

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity shall treat all tenders in confidence to the extent permitted by its domestic law. In particular, it shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. 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.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to satisfy the conditions for participation and whose tender is determined to be the most advantageous or best value for money, in accordance with the requirements and evaluation criteria specified in the notices and tender documentation.

6. A procuring entity shall not cancel a procurement or modify awarded contracts in order to avoid the obligations of this Chapter.

Article 15.17. Information on Awards

1. A procuring entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. On request, a procuring entity shall provide a supplier whose tender was not selected for award the reasons for not selecting its tender.

2. Each Party shall require its procuring entities either to promptly publish, or to publish no later than 60 days after award of a contract, a notice that includes at least the following information about the award:

(a) the name of the procuring entity;

(b) a description of the goods or services procured;

(c) the value of the contract award; and

(d) the name of the winning supplier.

3. A procuring entity shall maintain records and reports of tendering procedures relating to covered procurements, including the reports provided for in Article15.15.3, and shall retain such records and reports for a period of at least three years.

Article 15.18. Domestic Review of Supplier Challenges

1. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non- discriminatory, timely, transparent and effective manner, complaints that suppliers submit, in accordance with the Party's law, relating to a covered procurement. Where such an authority is not a court it shall either be subject to judicial review or shall have procedural guarantees similar to those of a court.

2. Each Party shall make information on complaint mechanisms generally available.

Article 15.19. Modifications and Rectifications

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

(a) notifies the other Party in writing and simultaneously offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraphs 2 and 3; and

(b) the other Party does not object in writing within 30 days of the notification.

2. Each Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedule in Annex 15-A provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments.

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

4. Where appropriate, the Joint FTA Committee shall adopt the modification, rectification or minor amendment notified by the Party concerned.

Article 15.20. Confidential Information

When a person of a Party makes available confidential information to the other Party or its procuring entities, the latter Party shall ensure that such information is kept confidential and is not used for a purpose other than that for which it was made available. However, disclosure of confidential information may occur where a Party or its procuring entities are required to make disclosure under its domestic law or where disclosure is authorised by the person that furnished the information.

Article 15.21. Encouraging Use of Electronic Communications In Procurement

1. The Parties shall seek to provide opportunities for government procurement to be undertaken through the Internet or a comparable computer-based telecommunications network.

2. In order to facilitate commercial opportunities for their suppliers under this Chapter, each Party shall maintain a single electronic portal for accessing information on government procurement supply opportunities in its territory and on measures relating to government procurement.

3. The Parties shall encourage, to the extent possible, the use of electronic means for the provision of tender documents and receipt of tenders.

4. The Parties shall ensure that policies and procedures adopted for the use of electronic means in procurement:

(a) protect documentation from unauthorised and undetected alteration; and

(b) provide appropriate levels of security for data on, and passing through, the procuring entity's network.

5. Each Party shall encourage its procuring entities to publish the notices covered by Article 15.9 on a website accessible through the electronic portal referred to in paragraph 2.

Article 15.22. Ensuring Integrity In Procurement Practices

Each Party shall ensure that criminal or administrative penalties exist to address corruption in its government procurement, and that its entities have in place policies and procedures to eliminate, to the extent possible, any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 15.23. 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 or not for profit institutions, or of prison labour.

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

3. Further to Article 22.2 (Security Exceptions — General Provisions and Exceptions Chapter), nothing in this Chapter shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.

Article 15.24. Consultations on Government Procurement

1. Each Party shall use the contact point referred in Chapter 19 (Transparency). The contact point shall be included in all communications between the Parties made pursuant to this Article.

2. For the purpose of this Article each Party shall reply to any request from the other party for an explanation of any matter relating to the application of this Chapter, including matters related to its procurement laws, regulations and policy guidelines.

3. The Parties shall exchange information relating to the development and use of electronic communication in government procurement systems, shall exchange statistics and other information; and shall make efforts to increase understanding of their respective government procurement systems. The Parties shall also exchange information on their respective approaches to maximise access for small and medium enterprises to the government procurement market.

4. As provided for in Article 15.19, each Party shall inform the other Party of any developments which may modify its coverage under this Chapter.

Article 15.25. Further Negotiations

On request of either Party, the Parties shall enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis, if a Party provides, through an international agreement entered into after entry into force of this Agreement, access to its procurement market for suppliers of a non-Party beyond what it provides under this Agreement to suppliers of the other Party.

Annex 15-A.

Section 1. Central Government Entities

1. This Chapter applies to central government entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Article 15.5, to equal or exceed the thresholds specified below:

(a) for procurement of goods and services: A$87,000 or CLP$35,911,000

(b) for procurement of construction services: A$9,570,000 or CLP$3,940,806,000

2. The monetary thresholds set out in paragraph 1 shall be adjusted in accordance with Section 8 of this Annex

Schedule of australia (1,2)

1. Agriculture, Fisheries and Forestry Portfolio

Department of Agriculture, Fisheries and Forestry

Dairy Adjustment Authority Biosecurity Australia

2. Attorney-General's Portfolio

Attorney-General's Department

Administrative Appeals Tribunal

Australian Crime Commission

Australian Customs Service

Australian Federal Police

AUSTRAC

CrimTrac Agency

Family Court of Australia

Federal Court of Australia

Federal Magistrates Court

Human Rights and Equal Opportunity Commission

Insolvency and Trustee Service Australia (TSA)

National Capital Authority

National Native Title Tribunal

Office of Parliamentary Counsel

Office of the Director of Public Prosecutions

3. Broadband, Communications and the Digital Economy Portfolio

Department of Broadband, Communications and the Digital Economy

4. Defence Portfolio

Department of Defence (3)

Department of Veterans' Affairs

Defence Materiel Organisation (3)

5. Education, Employment and Workplace Relations Portfolio

Department of Education, Employment and Workplace Relations

Australian Industrial Registry

Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)

Office of the Workplace Ombudsman

Workplace Authority

6. Environment, Heritage and the Arts Portfolio

Department of Environment, Water, Heritage and the Arts Bureau of Meteorology

7. Families, Housing, Community Services and Indigenous Affairs Portfolio

Department of Families, Housing, Community Services and Indigenous Affairs

Equal Opportunity for Women in the Workplace Agency

8. Finance and Deregulation Portfolio

Department of Finance and Deregulation

Australian Electoral Commission

Australian Reward Investment Alliance (4)

ComSuper

9. Foreign Affairs and Trade Portfolio

Department of Foreign Affairs and Trade

AusAid

Australian Centre for International Agricultural Research

10. Health and Ageing Portfolio (5)

Department of Health and Ageing

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)

National Blood Authority

Professional Services Review Scheme

11. Human Services Portfolio

Department of Human Services Centrelink

12. Infrastructure, Transport, Regional Development and Local Government Portfolio

Department of Infrastructure, Transport, Regional Development and Local Government

13. Immigration and Citizenship Portfolio

Department of Immigration and Citizenship

Migration Review Tribunal and Refugee Review Tribunal

14. Innovation, Industry, Science and Research Portfolio

Department of Innovation, Industry, Science and Research

Australian Research Council

IP Australia

15. Prime Minister and Cabinet Portfolio

Department of the Prime Minister and Cabinet

Australian National Audit Office

Australian Public Service Commission

Office of the Commonwealth

Ombudsman Office of the Inspector-General of Intelligence and Security

Office of the Official Secretary of the Governor-General

Office of the Privacy Commissioner

Office of the Renewable Energy Regulator

National Archives of Australia

16. Resources, Energy and Tourism Portfolio

Department of Resources, Energy and Tourism

Geoscience Australia

17. Treasury Portfolio

Department of the Treasury

Australian Bureau of Statistics

Australian Competition and Consumer Commission

Australian Office of Financial Management (AOFM)

Australian Taxation Office

Commonwealth Grants Commission

Inspector General of Taxation

National Competition Council

Productivity Commission

Royal Australian Mint

18. Parliamentary Departments

Department of the House of Representatives

Department of the Senate

Department of Parliamentary Services

Notes to the Schedule of Australia

1. This Chapter covers only those entities subordinate to the relevant portfolio which are listed in this Schedule.

2. This Chapter does not cover the procurement of motor vehicles by any entity listed in this Section.

3. Department of Defence and Defence Materiel Organisation

(a) This Chapter does not cover the procurement of the following goods due to Article 15.23:

	Approximately equivalent to:
Weapons	FSC 10
Fire Control Equipment	FSC 12
Ammunition and Explosives	FSC 13
Guided Missiles	FSC 14
Aircraft and Airframe Structural Components	FSC 15
Aircraft Components and Accessories	FSC 16
Aircraft Launching, Landing & Ground Handling Equipment	FSC 17
Space Vehicles	FSC 18
Ships, Small Craft, Pontoons and Floating Docks	FSC 19
Ship and Marine Equipment	FSC 20
Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles	FSC 23
Engines, Turbines and Components	FSC 28
Engines Accessories	FSC 29
Bearings FSC	FSC 31
Water Purification and Sewage Treatment Equipment	FSC 46
Valves	FSC 48
Maintenance and Repair Shop Equipment	FSC 49
Prefabricated Structures and Scaffolding	FSC 54
Communication, Detection and Coherent Radiation Equipment	FSC 58
Electrical and Electronic Equipment Components	FSC 59
Fiber Optics Materials, Components, Assemblies and Accessories	FSC 60
Electric Wire, and Power and Distribution Equipment	FSC 61

Alarm, Signal and Security Detection Systems	FSC 63
Instruments and Laboratory Equipment FSC	FSC 66
Specialty Metals	No Code

NB: Whether a good is included within the scope of this Note shall be determined solely according to the descriptions provided in the left column above. United States Federal Supply Codes (FSC) are provided for reference purposes only. (For a complete listing of the United States Federal Supply Codes, to which the Australian categories are approximately equivalent, see https://www.fbo. gov).

(b) For Australia, this Chapter does not cover the following services, as elaborated in the Common Classification System and the WTO system of classification — MTN.GNS/W/120, due to Article 15.23. (For a complete listing of Common Classification System, see: http://www.sice.oas.org/trade/nafta/chap-105.asp):

- Design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment (approximately equivalent to relevant parts of U.S. Product Service Codes A & J;

- Operation of Government-owned facilities (approximately equivalent to U.S. Product Service Code M);

- Space services (AR, B4 & V3); and

- Services in support of military forces overseas.

(c) This Chapter does not cover the procurement of goods and services by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate or the Defence Imagery and Geospatial Organisation.

(d) In respect of Article 15.4, the Australian Government reserves the right, pursuant to Article 15.23, to maintain the Australian Industry Involvement program and its successor programs and policies.

4. Department of Finance and Deregulation

This Chapter does not cover procurement by the Australian Reward Investment Alliance of investment management, investment advisory or master custody and safekeeping services for the purposes of managing and investing the assets of Australian Government superannuation funds.

5. Health and Ageing Portfolio

This Chapter does not apply to procurement of health and welfare services.

Schedule of chile

1. Presidencia de la República

2. Ministerio de Interior

3. Ministerio de Relaciones Exteriores

4. Ministerio de Defensa Nacional

5. Ministerio de Hacienda

6. Ministerio Secretaría General de la Presidencia

7. Ministerio Secretaría General de Gobierno

8. Ministerio de Economía, Fomento y Reconstrucción

9. Ministerio de Minería

10. Ministerio de Planificación y Cooperación

11. Ministerio de Educación

12. Ministerio de Justicia

13. Ministerio de Trabajo y Previsión Social

14. Ministerio de Obras Públicas

15. Ministerio de Transporte y Telecomunicaciones

16. Ministerio de Salud

17. Ministerio de Vivienda y Urbanismo

18. Ministerio de Bienes Nacionales

19. Ministerio de Agricultura

20. Ministerio Servicio Nacional de la Mujer

21. Ministerio de Energia

Gobiernos Regionales

Intendencia Región de Arica y Parinacota

Gobernación de Arica

Gobernación de Parinacota

Intendencia Región de Tarapacá

Gobernación de Iquique Gobernación de Tamarugal

Intendencia Región de Antofagasta

Gobernación de Antofagasta Gobernación de Loa

Gobernación de Tocopilla

Intendencia Regién de Atacama

Gobernacién de Copiapó

Gobernación de Huasco

Gobernación de Chañaral

Intendencia Región de Coquimbo

Gobernación de El Elqui

Gobernación de Limari

Gobernación de Choapa

Intendencia Región de Valparaíso

Gobernación de Valparaiso

Gobernación de Quillota

Gobernación de San Antonio

Gobernación de San Felipe

Gobernación de Los Andes

Gobernación de Petorca

Gobernación de Isla de Pascua

Intendencia Regién del Libertador Bernardo O'Higgins

Gobernación de Cachapoal

Gobernación de Colchagua

Gobernación de Cardenal Caro

Intendencia Region del Maule

Gobernación de Curicó

Gobernación de Talca

Gobernación de Linares

Gobernación de Cauquenes

Intendencia Region del Bio Bio

Gobernación de Concepcion

Gobernación de Ñuble

Gobernación de Bio-Bio

Gobernación de Arauco

Intendencia Región de La Araucania

Gobernación de Cautín

Gobernación de Malleco

Intendencia Región de Los Rios

Gobernación de Valdivia

Gobernación de Ranco

Intendencia Región de Los Lagos

Gobernación de Llanquihue

Gobernación de Osorno

Gobernación de Chiloé

Gobernación de Palena

Intendencia Región de Aysén del General Carlos Ibañez del Campo

Gobernación de Coihaique

Gobernación de Puerto Aysén

Gobernación de General Carrera

Gobernación de Capitán Prat

Intendencia Región de Magallanes y de la Antártica Chilena

Gobernación de Magallanes

Gobernación de Última Esperanza

Gobernación de Tierra del Fuego

Gobernación de Antártica Chilena

Intendencia Regién Metropolitana

Gobernación de Maipo

Gobernación de Cordillera

Gobernación de Talagante

Gobernación de Melipilla

Gobernación de Chacabuco

Gobernación de Santiago

Section 2. Sub-central Government Entities

1. This Chapter applies to the sub-central government entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Article 15.5, to equal or exceed:

(a) for procurement of goods and services: A$679,000 or CLP$279,557,000

(b) for procurement of construction services: A$9,570,000 or CLP$3,940,806,000

2. The monetary thresholds set out in paragraph 1 shall be adjusted in accordance with Section 8 of this Annex.

3. This Section covers only those entities specifically listed below.

Schedule of australia

Australian Capital Territory (1)

ACT Auditor-General's Office

ACT Electoral Commission

ACT Gambling and Racing Commission

ACT Health

ACT Human Rights Commission

ACT Insurance Authority

ACT Planning and Land Authority

ACT Planning and Land Council

ACT Workcover

Chief Minister's Department

Cultural Facilities Corporation

Department of Disability, Housing and Community Services

Department of Education and Training

Department of Justice and Community Safety

Department of Treasury

Territory and Municipal Services

Director of Public Prosecutions

Environment Commissioner

Legal Aid Commission of the ACT

National Exhibition Centre Trust

Ombudsman of the ACT

Independent Competition and Regulatory Commission

Note to the Schedule of Australia

1. For the entities listed for the Australian Capital Territory, this Chapter does not cover the procurement of health and welfare services, education services, utility services or motor vehicles.

New South Wales (1,2)

Department of Primary Industries

Office of the Rural Assistance Authority

Office of the NSW Food Authority

Attorney General's Department

Department of Environment and Climate Change Office of the Legal Aid Commission

Office of the Director of Public Prosecutions NSW Department of Commerce

Office of the Motor Accidents Authority

Office of the WorkCover Authority

Office for Children

Department of Ageing, Disability and Home Care Department of Community Services

Aboriginal Housing Office Group of Staff Department of Aboriginal Affairs

Department of Education and Training

Office of the Board of Studies

Department of Water and Energy

Department of Health

Office of the Health Care Complaints Commission Department of Planning

Office of the Sydney Harbour Foreshore Authority Department of Corrective Services

Department of Juvenile Justice

Ministry for Police

Office of the New South Wales Crime Commission Office of the Police Integrity Commission

Office of the Community Relations Commission Ombudsman's Office

Department of Premier and Cabinet

Office of the New South Wales Electoral Commission The Audit Office of New South Wales Department of State and Regional Development Department of Lands

Department of Local Government

Department of Rural Fire Service

New South Wales Fire Brigades

State Emergency Service

Department of Arts, Sport and Recreation Ministry of Transport

Office of the Sydney Olympic Park Authority

The Treasury

Tourism New South Wales Division

Notes to the Schedule of Australia

1. For the entities listed for New South Wales, this Chapter does not cover the procurement of health and welfare services, education services or motor vehicles.

2. For the entities listed for New South Wales, this Chapter does not apply to procurements undertaken by a covered entity on behalf of a non-covered entity.

Northern Territory (1)

Department of Chief Minister

Auditor General's Office

Department of the Legislative Assembly

Ombudsman's Office

Remuneration Tribunal

Aboriginal Areas Protection Authority

Department of Business, Economic and Regional Development Land Development Corporation

Department of Primary Industry, Fisheries and Mines

Department of Local Government, Housing and Sport

Department of Natural Resources, Environment and the Arts

Parks and Wildlife Commission of the Northern Territory

Strehlow Research Centre Board

Northern Territory Employment and Training Authority Work Health Authority

Department of Health and Community Services

Health and Community Services Complaints Commission Department of Justice

Northern Territory Emergency Service

Northern Territory Fire and Rescue Service

Police Force of the Northern Territory

Northern Territory Licensing Commission

Racing Commission

Tourism NT

Office of the Commissioner for Public Employment Northern Territory Treasury

Utilities Commission of the Northern Territory

Note to the Schedule of Australia

1. For the entities listed for the Northern Territory, this Chapter does not cover set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreements between the Northern Territory Government and Charles Darwin University.

Queensland (1, 2)

Department of Justice and Attorney-General Public Trust Office

Office of Fair Trading

Department of Child Safety

Department of Communities

Disability Services Queensland

Department of Emergency Services Queensland Ambulance Service

Queensland Fire and Rescue Service Department of Infrastructure and Planning Department of Local Government, Sport and Recreation Department of Main Roads

Department of Mines and Energy

Department of Natural Resources and Water Queensland Police Service

Department of Corrective Services

Department of the Premier and Cabinet

Office of the Queensland Parliamentary Counsel

Office of the Public Service Commissioner

Department of Primary Industries and Fisheries

Forestry Plantations Queensland

Department of Public Works

Department of Housing

Environmental Protection Agency

Department of Tourism, Regional Development and Industry Queensland Transport

Department of Employment and Industrial Relations Treasury Department

QSuper

Motor Accident Insurance Commission

Nominal Defendant

Office of Economic and Statistical Research

Office of State Revenue

Queensland Office of Gaming and Regulation

Notes to the Schedule of Australia

1. For the entities listed for Queensland, this Chapter does not apply to procurements by covered entities on behalf of non-covered entities.

2. For the entities listed for Queensland, this Chapter does not cover the procurement of health and welfare services, education services, government advertising and motor vehicles.

South Australia (1)

Department of the Premier and Cabinet

Arts SA

Aboriginal Affairs and Reconciliation Division Department of Treasury and Finance

Independent Gambling Authority

Department of Trade and Economic Development Department of Primary Industries and Resources SA Planning SA

Office for the Southern Suburbs

Department of Justice

Attorney-General's Department

Department for Correctional Services

Country Fire Services

Courts Administration Authority

South Australian Fire and Emergency Services Commission South Australian Metropolitan Fire Services

South Australian Police Department

State Electoral Office

Auditor-General's Department

Department of Families and Community Services Department of Health

Department of Education and Children's Services Department of Further Education Employment, Science & Technology SA Tourism Commission

Department for Environment and Heritage Environment Protection Authority

Department of Water, Land and Biodiversity Conservation Department of Transport, Energy and Infrastructure Office for State/Local Government Relations

State Procurement Board

Note to the Schedule of Australia

1. For the entities listed for South Australia, this Chapter does not cover the procurement of health and welfare services, education services, advertising services or motor vehicles.

Tasmania (1)

Department of Education

Department of Health and Human Services

Department of Infrastructure, Energy and Resources

Department of Justice

Department of Police and Emergency Management

Department of Premier and Cabinet

Department of Primary Industries and Water

Department of Economic Development and Tourism

Department of Environment, Parks, Heritage and the Arts

Department of Treasury and Finance

House of Assembly

Legislative Council

Legislature-General

Office of the Governor

Tasmanian Audit Office

Office of the Ombudsman

Note to the Schedule of Australia

1. For the entities listed for Tasmania, this Chapter does not cover the procurement of health and welfare services, education services or advertising services.

Victoria (1,2)

Department of Premier and Cabinet

Department of Treasury and Finance

Department of Human Services

Department of Education and Early Childhood Development

Department of Innovation Industry and Regional Development

Department of Infrastructure

Department of Sustainability and Environment

Department of Primary Industries

Department of Planning and Community Development

Department of Justice

Essential Services Commission

Office of Police Integrity

Office of Public Prosecutions

Office of the Chief Commissioner of Police

Office of the Commissioner for Environmental Sustainability

Office of the Legal Services Commissioner

Office of the Ombudsman

Office of the Privacy Commissioner

Office of the Special Investigations Monitor

Office of the Victorian Electoral Commission

State Services Authority

Victorian Auditor-General's Office

Notes to the Schedule of Australia

1. For the entities listed for Victoria, this Chapter does not cover the procurement of motor vehicles.

2. For the entities listed for Victoria, this Chapter does not apply to procurements by covered entities on behalf of non-covered entities.

Western Australia

Department of Agriculture and Food

Rural Business Development Corporation of Western Australia

Department of Fisheries

Mid West Development Commission

Wheatbelt Development Commission

Great Southern Development Commission

Office of the Director of Public Prosecutions

Office of the Information Commissioner

Law Reform Commission of Western Australia

Equal Opportunity Commission

Department of Health

Western Australian Electoral Commission

Department for Communities

Department for Child Protection

Disability Services Commission

Department of Culture and the Arts

Department of Consumer and Employment Protection

Department of Indigenous Affairs

Department of the Registrar, Western Australian Industrial Relations

Commission Department of Education and Training

Country High Schools Hostels Authority

Curriculum Council of Western Australia

Department of Education Services

Botanic Gardens and Parks Authority

Department of Water

Department of Environment and Conservation

Swan River Trust

Zoological Parks Authority

Department of Housing and Works

State Supply Commission of Western Australia

Department of Racing, Gaming and Liquor

Department of Local Government and Regional Development

Heritage Council of WA

National Trust of Australia (WA)

Kimberley Development Commission

Pilbara Development Commission

Gascoyne Development Commission

Goldfields Esperance Development Commission

Department for Planning and Infrastructure

Main Roads Western Australia

Western Australian Planning Commission

Public Transport Authority

Fire and Emergency Services Authority of Western Australia

Department of Attorney General

Department of Corrective Services

Office of the Inspector of Custodial Services

Western Australian Police

Department of the Premier and Cabinet

Goveror's Establishment

Office of the Public Sector Standards

Commissioner Salaries and Allowances Tribunal

Department of Industry and Resources

Minerals and Energy Research Institute of Western Australia

Western Australian Tourism Commission (Tourism Western Australia)

Small Business Development Corporation

Rottnest Island Authority

Department of Sport and Recreation

Western Australian Sports Centre Trust

South West Development Commission

Department of Treasury and Finance

Office of Energy

Perth International Centre for Application of Solar Energy

Legislative Assembly

Legislative Council

Office of the Auditor General

Office of the Parliamentary Commissioner for Administrative Investigations

Corruption and Crime Commission

Parliamentary Services Department

Schedule of chile

1. Municipalidad de Arica

2. Municipalidad de Camarones

3. Municipalidad de Putre

4. Municipalidad de General Lagos

5. Municipalidad de Iquique

6. Municipalidad de Alto Hospicio

7. Municipalidad de Pozo Almonte
8. Municipalidad de Camiña
9. Municipalidad de Colchane
10. Municipalidad de Huara
11. Municipalidad de Pica
12. Municipalidad de Antofagasta
13. Municipalidad de Mejillones
14. Municipalidad de Sierra Gorda
15. Municipalidad de Taltal
16. Municipalidad de Calama
17. Municipalidad de Ollagüe
18. Municipalidad de San Pedro de Atacama
19. Municipalidad de Tocopilla
20. Municipalidad de Maria Elena
21. Municipalidad de Copiapó
22. Municipalidad de Caldera
23. Municipalidad de Tierra Amarilla
24. Municipalidad de Chañaral
25. Municipalidad de Diego de Almagro
26. Municipalidad de Vallenar
27. Municipalidad de Alto del Carmen
28. Municipalidad de Freirina
29. Municipalidad de Huasco
30. Municipalidad de La Serena
31. Municipalidad de Coquimbo
32. Municipalidad de Andacollo
33. Municipalidad de La Higuera
34. Municipalidad de Paihuano
35. Municipalidad de Vicuña
36. Municipalidad de Illapel
37. Municipalidad de Canela
38. Municipalidad de Los Vilos
39. Municipalidad de Salamanca
40. Municipalidad de Ovalle
41. Municipalidad de Combarbalá

42. Municipalidad de Monte Patria
43. Municipalidad de Punitaqui
44. Municipalidad de Río Hurtado
45. Municipalidad de Valparaíso
46. Municipalidad de Casablanca
47. Municipalidad de Con – Con
48. Municipalidad de Juan Fernández
49. Municipalidad de Puchuncaví
50. Municipalidad de Quilpué
51. Municipalidad de Quintero
52. Municipalidad de Villa Alemana
53. Municipalidad de Viña del Mar
54. Municipalidad de Isla de Pascua
55. Municipalidad de Los Andes
56. Municipalidad de Calle Larga
57. Municipalidad de Rinconada
58. Municipalidad de San Esteban
59. Municipalidad de La Ligua
60. Municipalidad de Cabildo
61. Municipalidad de Papudo
62. Municipalidad de Petorca
63. Municipalidad de Zapallar
64. Municipalidad de Quillota
65. Municipalidad de La Calera
66. Municipalidad de Hijuelas
67. Municipalidad de La Cruz
68. Municipalidad de Limache
69. Municipalidad de Nogales
70. Municipalidad de Olmué
71. Municipalidad de San Antonio
72. Municipalidad de Algarrobo
73. Municipalidad de Cartagena
74. Municipalidad de El Quisco
75. Municipalidad de El Tabo
76. Municipalidad de Santo Domingo

77. Municipalidad de San Felipe
78. Municipalidad de Catemu
79. Municipalidad de Llay – Llay
80. Municipalidad de Panquehue
81. Municipalidad de Putaendo
82. Municipalidad de Santa María
83. Municipalidad de Rancagua
84. Municipalidad de Codegua
85. Municipalidad de Coinco
86. Municipalidad de Coltauco
87. Municipalidad de Doñihue
88. Municipalidad de Graneros
89. Municipalidad de Las Cabras
90. Municipalidad de Machalí
91. Municipalidad de Malloa
92. Municipalidad de Mostazal
93. Municipalidad de Olivar
94. Municipalidad de Peumo
95. Municipalidad de Pichidegua
96. Municipalidad de Quinta de Tilcoco
97. Municipalidad de Rengo
98. Municipalidad de Requínoa
99. Municipalidad de San Vicente
100. Municipalidad de Pichilemu
101. Municipalidad de La Estrella
102. Municipalidad de Litueche
103. Municipalidad de Marchihue
104. Municipalidad de Navidad
105. Municipalidad de Paredones
106. Municipalidad de San Fernando
107. Municipalidad de Chépica
108. Municipalidad de Chimbarongo
109. Municipalidad de Lolol
110. Municipalidad de Nancagua
111. Municipalidad de Palmilla

112. Municipalidad de Peralillo
113. Municipalidad de Placilla
114. Municipalidad de Pumanque
115. Municipalidad de Santa Cruz
116. Municipalidad de Talca
117. Municipalidad de Constitución
118. Municipalidad de Curepto
119. Municipalidad de Empedrado
120. Municipalidad de Maule
121. Municipalidad de Pelarco
122. Municipalidad de Pencahue
123. Municipalidad de Río Claro
124. Municipalidad de San Clemente
125. Minicipalidad de San Rafael
126. Municipalidad de Cauquenes
127. Municipalidad de Chanco
128. Municipalidad de Pelluhue
129. Municipalidad de Curicó
130. Municipalidad de Hualañé
131. Municipalidad de Licantén
132. Municipalidad de Molina
133. Municipalidad de Rauco
134. Municipalidad de Romeral
135. Municipalidad de Sagrada Familia
136. Municipalidad de Teno
137. Municipalidad de Vichuquén
138. Municipalidad de Linares
139. Municipalidad de Colbún
140. Municipalidad de Longaví
141. Municipalidad de Parral
142. Municipalidad de Retiro
143. Municipalidad de San Javier
144. Municipalidad de Villa Alegre
145. Municipalidad de Yerbas Buenas
146. Municipalidad de Concepción

147. Municipalidad de Coronel
148. Municipalidad de Chiguayante
149. Municipalidad de Florida
150. Municipalidad de Hualqui
151. Municipalidad de Lota
152. Municipalidad de Penco
153. Municipalidad de San Pedro de La Paz
154. Municipalidad de Santa Juana
155. Municipalidad de Talcahuano
156. Municipalidad de Tomé
157. Minicipalidad de Hualpén
158. Municipalidad de Lebu
159. Municipalidad de Arauco
160. Municipalidad de Cañete
161. Municipalidad de Contulmo
162. Municipalidad de Curanilahue
163. Municipalidad de Los Alamos
164. Municipalidad de Tirúa
165. Municipalidad de Los Angeles
166. Municipalidad de Antuco
167. Municipalidad de Cabrero
168. Municipalidad de Laja
169. Municipalidad de Mulchén
170. Municipalidad de Nacimiento
171. Municipalidad de Negrete
172. Municipalidad de Quilaco
173. Municipalidad de Quilleco
174. Municipalidad de San Rosendo
175. Municipalidad de Santa Bárbara
176. Municipalidad de Tucapel
177. Municipalidad de Yumbel
178. Municipalidad de Alto Bío Bío
179. Municipalidad de Chillán
180. Municipalidad de Bulnes
181. Municipalidad de Cobquecura

182. Municipalidad de Coelemu
183. Municipalidad de Coihueco
184. Municipalidad de Chillán Viejo
185. Municipalidad de El Carmen
186. Municipalidad de Ninhue
187. Municipalidad de Ñiquén
188. Municipalidad de Pemuco
189. Municipalidad de Pinto
190. Municipalidad de Portezuelo
191. Municipalidad de Quillón
192. Municipalidad de Quirihue
193. Municipalidad de Ranquil
194. Municipalidad de San Carlos
195. Municipalidad de San Fabián
196. Municipalidad de San Ignacio
197. Municipalidad de San Nicolás
198. Municipalidad de Trehuaco
199. Municipalidad de Yungay
200. Municipalidad de Temuco
201. Municipalidad de Carahue
202. Municipalidad de Cunco
203. Municipalidad de Curarrehue
204. Municipalidad de Freire
205. Municipalidad de Galvarino
206. Municipalidad de Gorbea
207. Municipalidad de Lautaro
208. Municipalidad de Loncoche
209. Municipalidad de Melipeuco
210. Municipalidad de Nueva Imperial
211. Municipalidad de Padre de Las Casas
212. Municipalidad de Perquenco
213. Municipalidad de Pitrufquén
214. Municipalidad de Pucón
215. Municipalidad de Saavedra
216. Municipalidad de Teodoro Schmidt

217. Municipalidad de Toltén
218. Municipalidad de Vilcún
219. Municipalidad de Villarrica
220. Municipalidad de Cholchol
221. Municipalidad de Angol
222. Municipalidad de Collipulli
223. Municipalidad de Curacautín
224. Municipalidad de Ercilla
225. Municipalidad de Lonquimay
226. Municipalidad de Los Sauces
227. Municipalidad de Lumaco
228. Municipalidad de Purén
229. Municipalidad de Renaico
230. Municipalidad de Traiguén
231. Municipalidad de Victoria
232. Municipalidad de Valdivia
233. Municipalidad de Corral
234. Municipalidad de Lanco
235. Municipalidad de Los Lagos
236. Municipalidad de Mafil
237. Municipalidad de Mariquina
238. Municipalidad de Paillaco
239. Municipalidad de Panguipulli
240. Municipalidad de La Unión
241. Municipalidad de Futrono
242. Municipalidad de Lago Ranco
243. Municipalidad de Río Bueno
244. Municipalidad de Puerto Montt
245. Municipalidad de Calbuco
246. Municipalidad de Cochamó
247. Municipalidad de Fresia
248. Municipalidad de Frutillar
249. Municipalidad de Los Muermos
250. Municipalidad de Llanquihue
251. Municipalidad de Maullín

252. Municipalidad de Puerto Varas
253. Municipalidad de Castro
254. Municipalidad de Ancud
255. Municipalidad de Chonchi
256. Municipalidad de Curaco de Velez
257. Municipalidad de Dalcahue
258. Municipalidad de Puqueldón
259. Municipalidad de Queilén
260. Municipalidad de Quellón
261. Municipalidad de Quemchi
262. Municipalidad de Quinchao
263. Municipalidad de Osorno
264. Municipalidad de Puerto Octay
265. Municipalidad de Purranque
266. Municipalidad de Puyehue
267. Municipalidad de Río Negro
268. Municipalidad de San Juan de La Costa
269. Municipalidad de San Pablo
270. Municipalidad de Chaitén
271. Municipalidad de Futaleufú
272. Municipalidad de Hualaihue
273. Municipalidad de Palena
274. Municipalidad de Coyhaique
275. Municipalidad de Lago Verde
276. Municipalidad de Aysén
277. Municipalidad de Cisnes
278. Municipalidad de Guaitecas
279. Municipalidad de Cochrane
280. Municipalidad de O'Higgins
281. Municipalidad de Tortel
282. Municipalidad de Chile Chico
283. Municipalidad de Río Ibañez
284. Municipalidad de Punta Arenas
285. Municipalidad de Laguna Blanca
286. Municipalidad de Río Verde

287. Municipalidad de San Gregorio
288. Municipalidad Cabo de Hornos (Ex Navarino)
289. Municipalidad Antártica
290. Municipalidad de Porvenir
291. Municipalidad de Primavera
292. Municipalidad de Timaukel
293. Municipalidad de Natales
294. Municipalidad de Torres del Paine
295. Municipalidad de Santiago
296. Municipalidad de Cerrillos
297. Municipalidad de Cerro Navia
298. Municipalidad de Conchalí
299. Municipalidad de El Bosque
300. Municipalidad de Estación Central
301. Municipalidad de Huechuraba
302. Municipalidad de Independencia
303. Municipalidad de La Cisterna
304. Municipalidad de La Florida
305. Municipalidad de La Granja
306. Municipalidad de La Pintana
307. Municipalidad de La Reina
308. Municipalidad de Las Condes
309. Municipalidad de Lo Barnechea
310. Municipalidad de Lo Espejo
311. Municipalidad de Lo Prado
312. Municipalidad de Macul
313. Municipalidad de Maipú
314. Municipalidad de Ñuñoa
315. Municipalidad de Pedro Aguirre Cerda
316. Municipalidad de Peñalolen
317. Municipalidad de Providencia
318. Municipalidad de Pudahuel
319. Municipalidad de Quilicura
320. Municipalidad de Quinta Normal
321. Municipalidad de Recoleta

322. Municipalidad de Renca

323. Municipalidad de San Joaquín

324. Municipalidad de San Miguel

325. Municipalidad de San Ramón

326. Municipalidad de Vitacura

327. Municipalidad de Puente Alto

328. Municipalidad de Pirque

329. Municipalidad de San José de Maipo

330. Municipalidad de Colina

331. Municipalidad de Lampa

332. Municipalidad de Til Til

333. Municipalidad de San Bernardo

334. Municipalidad de Buin

335. Municipalidad de Calera de Tango

336. Municipalidad de Paine

337. Municipalidad de Melipilla

338. Municipalidad de Alhué

339. Municipalidad de Curacaví

340. Municipalidad de Maria Pinto

341. Municipalidad de San Pedro

342. Municipalidad de Talagante

343. Municipalidad de El Monte

344. Municipalidad de Isla de Maipo

345. Municipalidad de Padre Hurtado

346. Municipalidad de Peñaflor

Section 3. Other Covered Entities

1. This Chapter applies to entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Article 15.5, to equal or exceed:

(a) for procurement of goods and services: A$436,000 or CLP$ 179,558,000

(b) for procurement of construction services: A$9,570,000 or CLP$ 3,940,806,000

2. The monetary thresholds set out in paragraph 1 shall be adjusted in accordance with Section 8 of this Annex.

3. This Section covers only those entities specifically listed below.

Schedule of australia (1)

Aged Care Standards and Accreditation Agency Ltd.

Australian Accounting Standards Board

Australian Communications and Media Authority

Australian Fisheries Management Authority

Australian Institute of Criminology

Australian Institute of Health and Welfare

Australian Institute of Marine Science

Australian Law Reform Commission

Australian Maritime Safety Authority

Australian National Maritime Museum

Australian Nuclear Science and Technology Organisation

Australian Pesticides and Veterinary Medicines Authority

Australian Prudential Regulation Authority

Australian Securities and Investments Commission Tourism Australia

Australian Trade Commission (Austrade)

Australian War Memorial (2)

Comcare

Commonwealth Scientific and Industrial Research Organisation

Corporations and Markets Advisory Committee

Export Finance and Insurance Corporation

Grains Research and Development Corporation

Great Barrier Reef Marine Park Authority

Medicare Australia

Land and Water Resources Research and Development Corporation

National Gallery of Australia

National Museum of Australia

Reserve Bank of Australia

Sydney Harbour Federation Trust

The Director of National Parks

Notes to the Schedule of Australia

1. For the entities listed in this schedule, this Chapter does not cover the procurement of motor vehicles.

2. This Chapter does not cover procurement of telecommunications services by the Australian War Memorial.

Schedule of chile

1. Empresa Portuaria Arica

2. Empresa Portuaria Iquique

3. Empresa Portuaria Antofagasta

4, Empresa Portuaria Coquimbo

5. Empresa Portuaria Valparaiso

6. Empresa Portuaria San Antonio

7. Empresa Portuaria San Vicente Talcahuano

8. Empresa Portuaria Puerto Montt

9. Empresa Portuaria Chacabuco

10. Empresa Portuaria Austral

11. Aeropuertos de propiedad del Estado, dependientes de la Dirección General de Aeronáutica Civil

Section 4. Goods

This Chapter applies to all goods procured by the entities listed in Sections 1 to 3, unless otherwise specified in this Chapter, including this Annex.

Section 5. Services

This Chapter applies to all services procured by the entities listed in Sections 1 to 3, unless otherwise specified in this Chapter, including this Annex.

Schedule of australia

This Chapter does not cover the procurement of research and development services, plasma fractionation services or government advertising services.

Section 6. Construction Services

This Chapter applies to all construction services procured by the entities listed in Sections 1 to 3, unless otherwise specified in this Chapter, including this Annex.

Schedule of australia

For the purposes of Articles 15.13.1 and 15.13.2, Australia requires, as a condition for participation in procurement of building and construction services, compliance with the National Code of Practice for the Construction Industry and related implementation guidelines at the central and sub-central government levels, and their successor policies and guidelines. In this respect Australia shall accord to the goods, services and suppliers of Chile, treatment no less favourable than the most favourable treatment it accords to its own goods, services and suppliers.

Schedule of chile

This Chapter shall not apply to construction services intended for Easter Island (*Isla de Pascua*).

Note to Section 6

Buy national requirements on articles, supplies or materials acquired for use in construction services contracts covered by this Chapter shall not apply to goods of either Party.

Section 7. General Notes

Unless otherwise specified herein, the following General Notes in each Party's Schedule apply without exception to this Chapter, including to all sections of this Annex.

Schedule of australia

This Chapter does not apply to:

(a) any form of preference to benefit small and medium enterprises;

(b) measures to protect national treasures of artistic, historic, or archaeological value;

(c) measures for the health and welfare of indigenous people; and

(d) measures for the economic and social advancement of indigenous people.

Section 8. Threshold Adjustment Formula

1. The thresholds in Sections 1 to 3 shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning January 1, 2010.

2. The thresholds shall be adjusted:

(a) for Australia to align with the adjusted thresholds for equivalent categories of procurement listed in Annex 15-A, Section 1 to 3 of the Australia-United States Free Trade Agreement, expressed in its national currency according to that Agreement; and

(b) for Chile to align with the adjusted thresholds for equivalent categories of procurement listed in Annex 9.1, Section A to C of the Chile-United States Free Trade Agreement, expressed in its national currency according to that Agreement.

3. A Party may round its calculations for adjusted thresholds covered by this section according to the following:

(a) for Australia, to the nearest thousand Australian Dollars; and

(b) for Chile, to the nearest hundred thousand Chilean Pesos.

4. The Parties shall consult if a major change in a national currency vis-à-vis Special Drawing Rights or the other currency during a year were to create a significant problem with regard to the application of the Chapter.

5. In the event that:

(a) Australia withdraws from the Australia-United States Free Trade Agreement pursuant to Article 23.4 of that Agreement; or

(b) Chile withdraws from the Chile-United States Free Trade Agreement pursuant to Article 24.4 of that Agreement; or

(c) The Australia-United States Free Trade Agreement or the Chile-United States Free Trade Agreement are terminated; or

(d) An alteration to the arrangements for determining or adjusting the thresholds referred to in paragraph 2 in either the Australia-United States Free Trade Agreement or the Chile-United States Free Trade Agreement impacts on the operation of this Chapter;

The Joint FTA Committee shall agree revised arrangements for determining or adjusting thresholds with a view to maintaining the balance between the Parties in respect of the thresholds applying to one or more categories of procurement as set out in Sections 1 to 3.

6. Each Party shall notify the other Party of the value of the newly calculated thresholds in its national currency no later than one month before the thresholds take effect.

Chapter 16. Electronic Commerce

Article 16.1. Definitions (16-1)

For the purposes of this Chapter:

(a) **digital certificates** are electronic documents or files that are issued or otherwise linked to a party to an electronic communication, transaction or contract for the purpose of establishing the party's identity, authority or other attributes;

(b) **electronic authentication** means the process of establishing levels of confidence in the identity of a party to an electronic communication or transaction;

(c) **electronic version of a document** means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;

(d) **personal data** means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information;

(e) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods;

(f) **party** means a person who takes part in a transaction or contract; and

(g) **electronic transmission** means the transfer of digital products using any electromagnetic or photonic means.

(16-1) For greater certainty, these definitions apply only to this Chapter.

Article 16.2. General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, and the importance of avoiding unnecessary barriers to its use and development consistent with this Agreement.

2. The aim of this Chapter is to promote electronic commerce between the Parties and the wider use of electronic commerce globally.

3. The Parties agree that, to the maximum extent possible, bilateral trade in electronic commerce shall be no more restricted than comparable non-electronic bilateral trade.

Article 16.3. Electronic Supply of Services

Nothing in this Chapter imposes obligations to allow the electronic supply of a service nor the electronic transmission of content associated with those services, except in accordance with the provisions of Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment) or Chapter 12 (Financial Services), including the Annexes (Non-Conforming Measures).

Article 16.4. Customs Duties

Each Party shall not impose customs duties on electronic transmissions between the Parties.

Article 16.5. Domestic Electronic Transactions Frameworks

1. Each Party shall adopt or maintain measures regulating electronic transactions based on the following principles:

(a) a transaction including a contract shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of an electronic communication; and

(b) laws should not discriminate arbitrarily between different forms of technology.

2. Nothing in paragraph 1 prevents the Parties from making exceptions in their domestic laws to the general principles outlined in that paragraph.

3. Each Party shall:

(a) minimise the regulatory burden on electronic commerce; and

(b) ensure that its measures regulating electronic commerce support industry-led development of electronic commerce.

Article 16.6. Electronic Authentication

1. The Parties recognise that electronic authentication represents an element that facilitates trade.

2. The Parties shall work towards the mutual recognition of digital certificates and electronic signatures at governmental level, based on internationally accepted standards.

3. Each Party shall adopt or maintain measures regulating electronic authentication that:

(a) permit parties who take part in a transaction or contract by electronic means to determine the appropriate authentication technologies and implementation models, and do not limit the recognition of such technologies and

implementation models, unless there is a domestic or international legal requirement to the contrary; and

(b) permit parties who take part in a transaction or contract by electronic means to have the opportunity to prove in court that their electronic transactions comply with any legal requirement.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 16.7. Online Consumer Protection

1. Each Party shall, to the extent possible and in a manner considered appropriate, adopt or maintain measures which provide protection for consumers using electronic commerce that is at least equivalent to measures which provide protection for consumers of other forms of commerce.

2. Each Party shall adopt or maintain measures regulating consumer protection where:

(a) consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce; and

(b) businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.

3. Each Party shall encourage business to adopt the following fair business practices where business engages in electronic commerce with consumers:

(a) businesses should provide accurate, clear and easily accessible information about themselves, the goods or services offered, and about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction;

(b) to avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction;

(c) consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

Article 16.8. Online Personal Data Protection

Each Party shall adopt or maintain a domestic legal framework which ensures the protection of the personal data of the users of electronic commerce. In the development of personal data protection standards, each Party shall take into account the international standards and criteria of relevant international bodies.

Article 16.9. Paperless Trading

1. Each Party shall endeavor to accept electronic versions of trade administration documents used by the other Party as the legal equivalent of paper documents, except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) doing so would reduce the effectiveness of the trade administration process.

2. For greater certainty, the Parties confirm that Article 5.11 (Paperless Trading — Customs Administration Chapter) applies to paperless trading under this Chapter.

3. Each Party shall work towards developing a single window (16-2) to government incorporating relevant international standards for the conduct of trade administration, recognising that each Party will have its own unique requirements and conditions.

Article 16.10. Consultations

1. The Parties will consult on electronic commerce matters arising under this Chapter including in relation to electronic signatures, data protection, online consumer protection and any other matters agreed by the Parties.

2. The consultations may be held via teleconference, videoconference, or through other means, as mutually determined by the Parties.

(16-2) The Parties consider a non-binding definition of a single window is "A facility that allows parties involved in trade and transport to lodge standardised information and documents with a single entry point to fulfil all import, export and transit related regulatory requirements. If information is electronic, then individual data elements should only be submitted once."

Chapter 17. Intellectual Property

Article 17.1. Definitions

For the purposes of this Chapter:

(a) **broadcasting** means the transmission to the public by wireless means, including satellite, of sounds or sounds and images, or representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

(b) **communication to the public of a performance or a phonogram** has the meaning in Article 2(g) of the *WIPO Performances and Phonograms Treaty*;

(c) **fixation in relation to performances and phonograms** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(d) **intellectual property** refers to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the TRIPS Agreement, namely: copyright and related rights; trade marks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; and protection of undisclosed information (17-1);

(e) **performance** refers to a performance fixed in a phonogram unless otherwise specified;

(f) **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;

(g) **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;

(h) **producer of a phonogram** means the person who, or the legal entity 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;

(i) **publication of a performance or a phonogram** means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(j) **WIPO** means the World Intellectual Property Organization; and

(k) **work** includes a cinematographic work.

17-1 For the purposes of this Chapter, intellectual property also includes rights in plant varieties.

Article 17.2. Purpose

The Parties recognise that it is important to provide adequate and effective protection and enforcement of intellectual property rights, promote efficient and transparent intellectual property systems and achieve an appropriate balance between the legitimate interests of intellectual property right holders and of users in subject matter protected by intellectual property rights.

Article 17.3. General Provisions

1. The Parties reaffirm their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral intellectual property agreements to which both are party.

2. 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. 3. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in its domestic law more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

Article 17.4. International Agreements

1. Each Party shall ratify or accede to the following agreements by 1 January 2009 in a manner consistent with its domestic law and subject to the fulfilment of its necessary internal requirements:

(a) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974) (the Brussels Convention);

(b) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980); and

(c) the International Convention for the Protection of New Varieties of Plants (1991).

2. Each Party shall undertake reasonable efforts to ratify or accede to the following agreements, in a manner consistent with its domestic law and subject to the fulfilment of its necessary internal requirements:

(a) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989),

(b) the Patent Cooperation Treaty (1970); and

(c) the Patent Law Treaty (2000).

Article 17.5. National Treatment

1. In respect of all intellectual property rights covered in this Chapter, each Party shall accord to persons of the other Party treatment no less favourable than it accords to its own persons with regard to the protection (17-2) and enjoyment of such intellectual property rights and any benefits derived from such rights, subject to the exceptions provided in multilateral intellectual property agreements to which either Party is, or becomes, a contracting party.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a person of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO in relation to the acquisition or maintenance of intellectual property rights.

(17-2) For the purposes of this Article, protection includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this Article, protection also includes the provisions concerning the prohibition on circumvention of effective technological measures and rights management information specified in Articles 17.28 and 17.29 respectively.

Article 17.6. Application of Agreement to Existing Subject Matter

1. Except as it provides otherwise, including Article 17.32, this Chapter gives tise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. 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 territory of the Party where the

protection is claimed.

Article 17.7. Application of Agreement to Prior Acts

This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article 17.8. Industrial Property

1. Each Party shall provide a system that permits owners to assert industrial property rights and interested parties to challenge such rights through administrative or judicial means, or both.

2. Each Party shall endeavour to simplify and streamline its administrative procedures and participate in international fora, including the WIPO fora, dealing with reform and development of the industrial property system.

TRADE MARKS

Article 17.9. Trade Marks Protection

Each Party shall provide that trade marks shall include trade marks in respect of goods and services, collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its domestic law. Each Party shall provide, in accordance with its domestic law, that a sound may constitute a sign, and a combination of colours may form all or part of a sign. Each Party may provide trade mark protection for scents. The Parties shall not require, as a condition of registration, that trade marks be visually perceptible. A Party may require that trade marks be represented graphically.

Article 17.10. Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trade mark shall have the exclusive right to prevent third parties not having the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are related to those goods or services in respect of which the trade mark is registered, where such use would result in a likelihood of confusion. (17-3)

(17-3) Tt is understood that likelihood of confusion is to be determined under the domestic trade mark law of each Party.

Article 17.11. Exceptions to Trade Mark Rights

Each Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trade mark and of third parties.

Article 17.12. Well Known Trade Marks

1. Article 6bis of the Paris Convention for the Protection of Industrial Property shall apply to goods or services that are not identical or similar to those identified by a well known trade mark (17-4), whether registered or not, provided that use of that trade mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trade mark, and provided that the interests of the owner of the trade mark are likely to be damaged by such use.

2. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999) as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO, and shall be guided by the principles contained in this Recommendation.

(17-4) By determining whether a trade mark is well known, the reputation of the trade mark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

Article 17.13. Trade Mark System of Protection

Each Party shall provide a system of protection for trade marks that provides procedures for examination as to substance and formalities, opposition, and cancellation, which shall include, but not be limited to:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trade mark;

(b) providing the opportunity for the applicant to respond to communications from the authorities responsible for registration of trade marks, to contest an initial refusal, and to appeal judicially any final refusal to register a trade mark;

(c) providing an opportunity for interested parties to oppose the registration of a trade mark or to seek cancellation of a trade mark; and

(d) requiring that decisions in opposition or cancellation proceedings be reasoned and in writing.

Article 17.14. Electronic Trade Marks System

Each Party shall provide, to the maximum extent practical:

(a) a system for the electronic application, processing, registration and maintenance of trade marks; and

(b) a publicly available electronic information system of registered trade marks.

Article 17.15. Term of Protection for Trade Marks

Each Party shall provide that initial registration of a trade mark shall be for a term of no less than 10 years.

Article 17.16. Classification of Goods and Services

Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as amended.

Article 17.17. Geographical Indications

1. Each Party shall recognise that geographical indications may be protected through a trade mark or sui generis system or other legal means.

2. Each Party shall provide the means for persons of the other Party to apply for protection of geographical indications. Each Party shall accept applications without the requirement for intercession by a Party on behalf of its persons, and shall:

(a) process applications for geographical indications with a minimum of formalities;

(b) make its regulations governing filing of such applications readily available to the public;

(c) ensure that applications for geographical indications are published for opposition and provide procedures for:

(i) opposing geographical indications before registration; and

(ii) cancellation of any registered geographical indications;

(d) ensure that measures governing the filing of applications for geographical indications set out clearly the procedures for such actions and shall include contact information sufficient for applicants to obtain specific procedural guidance regarding the processing of those applications; and

(e) provide that the grounds for refusing an application for protection of a geographical indication, or for opposing such an application, include the following: (17-5)

(i) The geographical indication is confusingly similar to a trade mark that is the subject of a pre-existing good-faith pending application or registration; and

(ii) the geographical indication is confusingly similar to a pre-existing trade mark, the rights to which have been acquired through use in good faith in the territory of the Party.

(17-5) Without prejudice, final decisions on the matters covered in Article 17.17.2(e) shall be taken according to each Party's domestic law.

COUNTRY NAMES

Article 17.18. Country Names

Each Party 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.

PATENTS

Article 17.19. Availability of Patents

Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For the purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as synonymous with the terms "non-obvious" and "useful", respectively.

Article 17.20. Exceptions to Patent Rights

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.

Article 17.21. Patent System of Protection

1. Each Party shall provide an opportunity, either before or after grant, for interested parties to oppose the grant of a patent or to seek its revocation or cancellation (17-6).

2. Each Party shall provide that a patent may only be revoked or cancelled on grounds that would have justified a refusal to grant the patent.

3. Notwithstanding paragraph 2, a Party may also provide that a patent may be revoked or cancelled on the basis of fraud, or that the patent is used in a manner determined to be anticompetitive in a judicial proceeding (17-7).

(17-6) For the purposes of this Article, a Party may treat the term "cancellation" as synonymous with "revocation" and the term "cancelled" as synonymous with "revoked".

(17-7) Where a Party provides that misrepresentation or inequitable conduct are grounds for revocation or cancellation of a patent, it may continue to so provide.

Article 17.22. Grace Period for Patents

Neither Party shall use the information contained in a public disclosure to prevent patentability due to a lack of novelty or inventive step if the public disclosure:

(a) was made or authorised by, or derived from, the patent applicant; and

(b) occurs within 12 months prior to the date of filing of the application in the territory of the Party.

Article 17. Classification of Patents

Each Party shall maintain a patent classification system that is consistent with the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended.

DOMAIN NAMES

Article 17.24. Dispute Settlement and Registration Database

1. Each Party shall require that the management of its country-code top-level domain (ccTLD) provide 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 provide online public access to a reliable and accurate database of domain-name registrations in accordance with each Party's law regarding protection of personal data.

COPYRIGHT

Article 17.25. Right of Reproduction

1. Each Party shall provide that authors (17-8) of literary and artistic works have the right to authorise or prohibit (17-9)' all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in material form) (17-10).

2. The Parties reaffirm that it is a matter for each Party's law to prescribe that works shall not be protected by copyright unless they have been fixed in some material form.

(17-8) References to "authors" in this Chapter refer also to any successors in interest.

(17-9) For the purposes of paragraph 1 of Article 17.25 and paragraph 1 of Article 17.26, a right to authorise or prohibit means an exclusive right. For avoidance of doubt, in the case of Chile, a right to authorise also means an exclusive right.

(17-10) It is consistent with this Agreement to provide exceptions and limitations for temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a work; and which have no independent economic significance.

RELATED RIGHTS

Article 17.26. Right of Reproduction

1. Each Party shall provide that performers, in respect of their performances, and producers of phonograms, in respect of their phonograms (17-11), have the right to authorise or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in material form) (17-12).

2. The Parties reaffirm that it is a matter for each Party's law to prescribe that performances and phonograms shall not be protected by related rights unless they have been fixed in some material form.

(17-11) References to "performers" and "producers of phonograms" in this Chapter refer also to any successors in interest.

(17-12) It is consistent with this Agreement to provide exceptions and limitations for temporary acts of reproduction of performances or phonograms which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a performance or phonogram; and which have no independent economic significance.

COMMON PROVISIONS TO COPYRIGHT AND RELATED RIGHTS

Article 17.27. Term of Protection for Copyright and Related Rights

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

author's 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 authorised publication of the work, performance or phonogram; or

(ii) failing such authorised 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.

Article 17.28. Effective Technological Measures

Each Party shall provide for civil remedies or administrative measures and, when appropriate, criminal penalties, against the circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their copyright and related rights, and that restrict acts in respect of their works, performances or phonograms, which are not authorised by those right holders, or permitted by law.

Article 17.29. Rights Management Information

In order to provide adequate and effective legal remedies to protect rights management information:

(a) each Party shall provide that any person who without authority, and with respect to civil remedies, having reasonable grounds to know, that it will 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 altered without authority; or

(iii) distributes to the public, 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, upon the suit of any injured person, and subject to civil remedies.

(b) Further to paragraph (a), each Party shall provide for the application of criminal procedures and penalties at least in cases where acts prohibited in subparagraph (a) are done knowingly, wilfully and for purposes of commercial advantage. A Party may exempt from criminal liability prohibited acts done in connection with a non-profit library, archive, educational institution or broadcasting entity (17-13) established without a profit-making purpose (17-14).

(17-13) A Party may provide that such a broadcasting entity means a "public non-commercial broadcasting entity".

(17-14) Each Party may provide for other exceptions to civil and criminal liability in accordance with its domestic law.

Article 17.30. Government Use of Software

Each Party shall maintain appropriate laws, orders, regulations, government issued guidelines or administrative or executive decrees which provide that its central government agencies use only legitimate computer software as authorised.

Article 17.31. Exceptions to Copyright and Related Rights

Each Party shall provide for exceptions or limitations to copyright and related rights included in this Chapter, in accordance with the Berne Convention for the Protection of Literary and Artistic Works, the TRIPS Agreement, the WIPO Copyright Treaty and/or the WIPO Performances and Phonograms Treaty.

Article 17.32. Application In Time

Each Party shall apply Article 18 of the Berne Convention, *mutatis mutandis*, to the subject matter, rights and obligations in Articles 17.25 to 17.31 inclusive.

Each Party shall apply Article 18 of the Berne Convention, mutatis mutandis, to the subject matter, rights and obligations in Articles 17.25 to 17.31 inclusive.

ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS

Article 17. Protection

1. Each Party shall make it:

(a) the basis for a civil action or a criminal offence to manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing that the device or system is of assistance in decoding an encrypted program-carrying satellite signal (17-15) without the authorisation of the lawful distributor of such signal; and

(b) the basis for a civil action or a criminal offence wilfully to receive and make use of, or further distribute, a program-carrying signal that originated as an encrypted program-carrying satellite signal knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

2. Each Party shall provide for the availability of civil proceedings for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted program-carrying signal or its content.

(17-15) The degree to which the device or system assists in decoding an encrypted program-carrying satellite signal shall be a matter of each Party's law.

ENFORCEMENT

Article 17. General

1. Each Party shall ensure that procedures, remedies and penalties set forth in Articles 17.34 to 17.40 for enforcement of intellectual property rights are established in accordance with its domestic law (17-16). Such administrative and judicial procedures, remedies or penalties, both civil and criminal, shall be made available to the holders of such rights in accordance with the principles of due process that each Party recognises, as well as with the foundations of its own legal system.

2. Articles 17.34 to 17.40 do not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that already existing 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 distribution of resources for the enforcement of intellectual property rights shall not excuse a Party from compliance with the provisions of Articles 17.34 to 17.40.

3. Each Party shall provide that final decisions of general application pertaining to the enforcement of intellectual property rights shall be in writing and shall state the reasons or the legal basis on which the decisions are based. Each Party shall provide that such decisions shall be published, preferably electronically, or, where such publication is not practicable, otherwise made available to the public in its national language in such a manner as to enable governments and right holders to become acquainted with them.

(17-16) Nothing in this Chapter prevents a Party from establishing or maintaining appropriate judicial or administrative procedural formalities for this purpose that do not impair each Party's rights or obligations under this Agreement.

Article 17.35. Presumptions for Copyright and Related Rights

In civil judicial and criminal proceedings involving copyright or related rights, each Party shall provide:

(a) for a presumption, in the absence of evidence to the contrary, that the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner (17-17) shall be presumed to be the designated right holder in such work, performance or phonogram; and

(b) in accordance with its domestic law, for a presumption, in the absence of evidence to the contrary, that copyright or a related right subsists in such subject matter.

(17-7) Rach Party may establish the means by which it shall determine what constitutes the "usual manner' for a particular physical support.

Article 17.36. Civil and Administrative Procedures and Remedies

1. Each Party shall make available to right holders (17-18) civil judicial procedures concerning the enforcement of any intellectual property right.

2. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall:

(a) 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 trade mark counterfeiting, the profits of the infringer that are attributable to the infringement, and that are not taken into account in determining damages under subparagraph (i) (17-19).

(b) in determining any order for damages made under subparagraph (a), consider, inter alia, any legitimate measure of the value of the infringed goods or services including the retail price.

3. Each Party shall provide that, except in exceptional circumstances, its judicial authorities shall have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights or trade mark counterfeiting, that the prevailing party be awarded payment of courts costs or fees and reasonable attorney's fees by the infringing party.

4. In civil judicial proceedings concerning copyright or related rights infringement and trade mark counterfeiting, each Party shall provide that its judicial authorities shall have the authority, at least where necessary to prevent further infringement, to order the seizure of suspected infringing goods, related materials and implements by means of which such goods are produced.

5. 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 persons involved in the infringement and regarding the distribution channels of the infringing goods. Judicial authorities shall also have the authority to impose fines or imprisonment on infringers who do not comply with such orders, in accordance with each Party's domestic law.

6. If a Party's judicial or other authorities appoint technical or other experts in civil judicial proceedings concerning the enforcement of intellectual property rights, and require that the parties to the proceedings bear the costs of such experts, the Party should seek to ensure that these costs are reasonable and related appropriately to, inter alia, the quantity and nature of work to be performed, or, if applicable, based on standardised fees, and do not unreasonably deter recourse to such proceedings.

17-18 For the purpose of this Article, the term **right holder** includes licensees as provided for in each Party's domestic law, as well as federations and associations having the legal standing and authority to assert such rights.

17-19 Notwithstanding Article 17.36.2(a), a Party may provide any one or more of the following: that only one or the other of the remedies set out in Article 17.36.2(a)(i) and (ii) is available at the election of the right holder; in the case of a finding of non-use of a trade mark that the right holder may not be entitled to either of the remedies set out in Article 17.36.2(a)(i) and (ii); and in the case of innocent copyright and related rights infringement that the right holder may be entitled to an account of profits but not damages.

Article 17.37. Provisional Measures

1. Each Party's authorities shall act on requests for relief inaudita altera parte expeditiously in accordance with the Party's judicial rules.

2. With respect to provisional measures, each Party shall provide that its judicial authorities shall have the authority to

require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder (17-20) and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the respondent and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

17-20 In accordance with subparagraph (a) of Article 17.35.

Article 17.38. Criminal Procedures and Remedies

Each Party shall provide for criminal procedures and penalties to be applied at least in cases where a person wilfully engages in trade mark counterfeiting or piracy of works, performances or phonograms on a commercial scale (17-21) including wilful infringement of copyright and related rights for a commercial advantage or financial gain. (17-22) Specifically, each Party shall provide:

(a) penalties that include imprisonment and/or monetary fines that are sufficient to provide a deterrent to infringement consistent with the level of penalties applied for crimes of a corresponding gravity;

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, related materials and implements that have been used in the commission of the offence, assets legally traceable to the infringing activity and documentary evidence relevant to the offence (17-23), Each Party shall further provide that its judicial authorities have the authority to order the seizure of items in accordance with its domestic law;

(c) that its judicial authorities shall have the authority, among other measures, to order the forfeiture of any assets legally traceable to the infringing activity for at least indictable offences, and the forfeiture and destruction of all goods found to be counterfeit or pirated, and, at least with respect to wilful copyright and related rights piracy, to order the forfeiture and destruction of materials and implements that have been used in the making of the infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation to the defendant; and

(d) that the appropriate authorities, as determined by each Party, shall have the authority to initiate criminal legal action ex officio in cases of copyright and related rights piracy and trade mark counterfeiting without the need for a formal complaint by a person or right holder.

(17-21) Piracy of works, performances or phonograms on a commercial scale may include where a person wilfully commits significant infringements of copyright that are not committed for the purpose of commercial advantage or financial gain.

(17-22) Commercial advantage or financial gain shall be understood to exclude de minimis infringements. Nothing in this Agreement prevents prosecutors from exercising any discretion that they may have to decline to pursue cases.

(17-23) Each Party may 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.

Article 17.39. Border Measures

1. Each Party shall provide, in any right holder initiated procedures for suspension by its Customs Administration of the release into free circulation of suspected counterfeit trade mark goods or pirated copyright goods (17-24) imported into the Party's territory, that the right holder provide to the satisfaction of the competent authorities:

(a) adequate evidence that there is prima facie infringement of the right holders' intellectual property rights under the laws of the territory of importation and a sufficiently detailed description of the goods to make them reasonably recognisable by the Party's Customs Administration; and

(b) if requested, a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse.

The requirements for a sufficiently detailed description and a security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall provide that its competent authorities have 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.

3. Each Party shall provide that its Customs Administration may initiate border measures ex officio with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods, without the need for a specific formal complaint.

4. Each Party shall provide that goods that have been suspended from release by its Customs Administration, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional cases. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. The competent authorities, except in exceptional circumstances, shall not be authorised to permit the exportation of counterfeit or pirated goods that have been seized, nor shall they be authorised to permit such goods to be subject to movement under customs control.

(17-24) For the purposes of Article 17.39.1 to 4: (a) counterfeit trade mark goods means any goods including packaging, bearing without authorisation a trade mark that is identical to the trade mark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trade mark, and that thereby infringes the rights of the owner of the trade mark in question under the law of the country of importation; and (b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or related right under the law of the country of importation.

Article 17.40. Service Provider Liability

1. Each Party shall provide for a legislative scheme to limit remedies that may be available against service providers (17-25) for infringement of copyright or related rights (17-26) that they do not control, initiate or direct and that take place through their systems or networks.

2. The scheme in paragraph 1 will only apply if a service provider meets conditions, including:

(a) removing or disabling access to infringing material upon notification from the rights owner through a procedure established by each Party; and

(b) no financial benefit is received by the service provider for the infringing activity in circumstances where it has the right and ability to control such activity.

(17-25) Each Party may determine, within its domestic law, what constitutes a service provider.

(17-26) Rach Party may determine, within its domestic law, what constitutes a related right for the purpose of this Article.

COOPERATION

Article 17.41. Cooperation

Consistent with Article 17.2 the Parties agree to cooperate through:

(a) the notification of relevant contact points on the request of a Party; and the exchange of publicly available information concerning policy developments in intellectual property of a Party on the request of the other Party and to the extent that the requested Party is able to provide such information.

Chapter 18. Cooperation

Article 18.1. General Objectives

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. 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.

Article 18.2. Scope

1. 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.

2. Cooperation between the Parties under this Chapter will complement the cooperation between the Parties set out in other Chapters of this Agreement.

3. Areas of cooperation may include but should not be limited to: science, agriculture including the wine industry, food production and processing, mining, energy, environment, small and medium enterprises, tourism, education, labour, human capital development and cultural collaboration.

4. Cooperation on labour and employment matters of mutual interest and benefit will be based on the concept of decent work, including the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

5. Cooperation on environment will reflect the commitment of both Parties to strengthening environmental protection and the promotion of sustainable development, in the context of strengthening trade and investment relations between them.

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

7. Areas of cooperation may be developed through existing agreements and through appropriate implementing arrangements including the designation of national contact points to facilitate activities on environment and labour cooperation.

Article 18.3. Innovation, Research and Development

Cooperation in innovation, research and development will be focused on cooperative activities in sectors where mutual and complementary interests exist. Among other activities, the Parties will encourage the exchange of experts and information. Where appropriate, they will also promote partnerships in the support of the development of innovative products and services and activities to promote linkage, innovation and technology exchange.

Article 18.4. Cooperation Committee

1. For the purposes of this Chapter, the Parties hereby establish a Cooperation Committee ("the Committee") comprising representatives of each Party.

2. The Committee shall be coordinated and co-chaired by:

(a) in the case of Australia, the Department of Foreign Affairs and Trade, or its successor; and

(b) in the case of Chile, the Ministry of Foreign Affairs through the General Directorate for International Economic Affairs and the Chilean Agency for International Cooperation, or their successors.

3. In order to ensure the proper functioning of the Committee, each Party will designate a contact person no later than 6 months from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact person.

4. The Committee shall meet in or shortly after the first year of entry into force of this Agreement, and thereafter as agreed

by the Parties.

5. The Committee shall:

(a) adopt the Committee's operating procedures;

(b) discuss cooperative activities which might be undertaken under this Chapter;

(c) review where appropriate the implementation of cooperative activities;

(d) maintain and update information on cooperation between the Parties, including implementing arrangements; and

(e) undertake such other functions to foster cooperation including establishing working groups under this Chapter as the Parties may agree.

6. The Committee may interact, where appropriate, with relevant entities to address specific matters.

7. The Committee shall report periodically to the Joint FTA Committee the results of its meetings.

Article 18.5. Resources

With the aim of contributing to the fulfilment of the objectives of this Chapter, the Parties shall provide, within the limits of their own capacities and through their own channels, adequate resources to support cooperative activities, as required.

Chapter 19. Transparency

Article 19.1. Definitions

For the purposes of this Chapter:

administrative ruling of general application means an administrative or quasi-judicial 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 proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 19.2. Contact Points

1. The contact point referred in Annex 19-A shall facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other 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 19.3. Publication

1. Each Party shall ensure, wherever possible in electronic form, 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 the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 19.4. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests

under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

3. Any notification, request or information under this Article shall be provided to the other Party through the relevant contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 19.5. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner its measures referred to in Article 19.3, each Party shall ensure that in its administrative proceedings in which these measures are applied to particular persons, goods or services of the other Party in specific cases that it:

(a) provides wherever possible, persons of the other Party that are directly affected by a proceeding reasonable notice, in accordance with its 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) affords such persons 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) follows its procedures in accordance with domestic law.

Article 19.6. Review and Appeal (19-1)

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 that is the subject of the decision.

(19-1) Ih the case of Australia, for avoidance of doubt, "review" includes merits (de novo) review only where provided for under the Party's law.

Annex 19-A. Contact points

For purposes of Article 19.2.1, the Contact Points shall be:

(a) in the case of Australia, the Department of Foreign Affairs and Trade, or its successor; and

(b) in the case of Chile, the Asia Pacific Department of the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor.

Chapter 20. Institutional Arrangements

Article 20.1. Joint Fta Committee

1. The Parties hereby establish a Joint FTA Committee.

2. The Joint FTA Committee shall be composed of relevant government officials of each Party and shall be co-chaired by (i) a Deputy Secretary of the Department of Foreign Affairs and Trade for Australia and (ii) the Director-General of International Economic Relations of the Ministry of Foreign Affairs for Chile, or their respective designees.

3. The Joint FTA Committee shall:

(a) review the general functioning of this Agreement;

(b) review, consider and, as appropriate, decide on specific matters related to the operation, application and implementation of this Agreement, including matters reported by committees or working groups established under this Agreement;

(c) supervise the work of committees, working groups and contact points established under this Agreement;

(d) facilitate, as appropriate, the avoidance and settlement of disputes arising under this Agreement, including through consultations pursuant to Article 21.4 (Referral of Matters to the Joint FTA Committee — Dispute Settlement Chapter);

(e) consider and adopt any amendment to this Agreement or other modification or rectification to the commitments therein, subject to completion of necessary domestic legal procedures by each Party (20-1);

(f) as appropriate, issue interpretations of the Agreement;

(g) review the wider trade relationship;

(h) explore ways to enhance further trade and investment between the Parties and to further the objectives of this Agreement; and

(i) take such other action as the Parties may agree.

4. The Joint FTA Committee may seek the advice of non-governmental persons or groups on matters covered by this Agreement.

(20-1) Chile shall implement any amendment or other modification approved by the Joint FTA Committee of the following provisions of the Agreement through Acuerdos de Ejecución, in accordance with the Constitución Política de la República de Chile: (i) the Schedules attached to Annex 3-B (Elimination of Customs Duties), to accelerate tariff elimination; (ii) the rules of origin established in Annex 4-C (Rules of Origin Schedule); and (iii) the entities listed in Annex 15-A to the Government Procurement Chapter.

Article 20.2. Meetings of the Joint Fta Committee

1. The Joint FTA Committee shall meet:

(a) in or shortly after the first year of entry into force of this Agreement; and

(b) thereafter as agreed by the Parties.

2. The Joint FTA Committee shall meet alternately in the territory of each Party, unless the Parties otherwise agree.

3. The Joint FTA Committee shall also meet in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties.

4. All decisions of the Joint FTA Committee shall be taken by mutual agreement.

5. The Joint FTA Committee may adopt its own rules of procedure.

Chapter 21. Dispute Settlement

Article 21.1. Scope and Coverage

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning the implementation, interpretation, application or operation of this Agreement, which includes wherever a Party considers that:

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

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

(c) a benefit the Party could reasonably have expected to accrue to it under Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), 5 (Customs Administration), 7 (Technical Regulations, Standards and Conformity Assessment Procedures), 9 (Cross-Border Trade in Services), 15 (Government Procurement) or 17 (intellectual Property) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. In cases where there is an infringement of the obligations under this Agreement, the action is considered prima facie to constitute a case of nullification or impairment.

Article 21.2. Choice of Dispute Settlement Procedure

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which both Parties are party or 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 others.

Article 21.3. Consultations

1. Either Party may request in writing consultations with the other Party concerning any matter on the implementation, interpretation, application or operation of this Agreement, including a matter relating to a measure that the other Party proposes to take (hereinafter referred to in this Chapter as "proposed measure").

2. The requesting Party shall deliver the request to the other Party, setting out the reasons for the request, including 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.

3. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

4. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

5. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 21.4. Referral of Matters to the Joint Fta Committee

1. If the consultations fail to resolve the matter within 40 days of the delivery of a Party's request for consultations under Article 21.3.2, or 20 days in cases of urgency including those which concern perishable goods, the complaining Party may refer the matter to the Joint FTA Committee by delivering written notification to the other Party. The Joint FTA Committee shall endeavour to resolve the matter.

2. The Joint FTA Committee 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 Parties to reach a mutually satisfactory resolution of the dispute. Article 21.5: Establishment of Arbitral Panels 1. The complaining Party that requested consultations under Article 21.3 may request in writing the establishment of an arbitral panel, if the Parties fail to resolve the matter within:

(a) 45 days after the date of receipt of the request for consultation if there is no referral to the Joint FTA Committee under Article 21.4;

(b) 30 days of the Joint FTA Committee convening pursuant to Article

21.4, or 15 days in cases of urgency including those which concern perishable goods; or

(c) 60 days after a Party has delivered a request for consultation under Article 21.3, or 30 days in cases of urgency including those which concern perishable goods, if the Joint FTA Committee has not convened after a referral under Article 21.4.

2. The establishment of an arbitral panel shall not be requested on any matter relating to a proposed measure.

3. Any request to establish an arbitral panel pursuant to this Article shall identify:

(a) the specific measure at issue;

(b) the legal basis of the complaint including any provision of this Agreement alleged to have been breached and any other relevant provisions; and

(c) the factual basis for the complaint.

4. The panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. The date of the establishment of an arbitral panel shall be the date on which the chair is appointed.

Article 21.6. Terms of Reference of Arbitral Panels

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference of the arbitral 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 arbitral panel pursuant to Article 21.5, to make findings of law and fact and determinations on whether the measure is not in conformity with the Agreement or is causing nullification or impairment in the sense of Article 21.1(c) together with the reasons therefore, and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitral panel may make recommendations for resolution of the dispute."

Article 21.7. Composition of Arbitral Panels

1. An arbitral panel shall comprise three panelists.

2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral panel, appoint one panelist who may be its national and propose up to three candidates to serve as the third panelist who shall be the chair of the arbitral panel. The third panelist 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.

3. The Parties shall agree on and appoint the third panelist within 45 days after the date of receipt of the request for the establishment of an arbitral panel, taking into account the candidates proposed pursuant to paragraph 2.

4. If a Party has not appointed a panelist pursuant to paragraph 2 or if the Parties fail to agree on and appoint the third panelist pursuant to paragraph 3, the panelist or panelists not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 2.

5. All panelists shall:

(a) have expertise or experience in law, international trade or other matters covered by this Agreement;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or receive instructions from, the government of either Party; and

(d) comply with a code of conduct, to be provided in the Rules of Procedure referred to in Article 21.13.

6. If a panelist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within 15 days in accordance with the appointment procedure provided for in paragraphs 2, 3 and 4, which shall be applied, respectively, mutatis mutandis. The successor shall have all the powers and duties of the original panelist. The work of the arbitral panel shall be suspended for a period beginning on the date the original panelist dies, becomes unable to act or resigns. The work of the arbitral panel shall resume on the date the successor is appointed.

Article 21.8. Proceedings of Arbitral Panels

1. The arbitral panel shall meet in closed session except when meeting with the Parties. Panel meetings with the Parties shall

be open to the public except where information designated as confidential by a Party is being discussed.

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 arbitral panel, including any comments on the draft report and responses to questions put by the arbitral panel, shall be made available to the other Party.

3. The arbitral panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

4. The arbitral panel shall aim to make its decisions, including its report, by consensus but may also make its decisions, including its report, by majority vote.

5. After notifying the Parties, and subject to such terms and conditions as the Parties may agree if any within 10 days, the arbitral 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 panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

6. The deliberations of the arbitral panel and the documents submitted to it shall be kept confidential.

7. Notwithstanding paragraph 6, 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 arbitral panel which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 28 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

8. Each Party shall bear the cost of its appointed panelist and its own expenses. The cost of the chair of an arbitral panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

Article 21.9. Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral 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 set out in paragraphs 2, 5 and 7 of Article 21.10 and paragraph 7 of Article 21.12 shall be extended by the amount of time that the work was suspended. If the work of the arbitral panel has been suspended for more than 12 months, the authority for establishment of the arbitral panel shall lapse unless the Parties agree otherwise.

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

Article 21.10. Report

1. The report of the arbitral panel shall be drafted without the presence of the Parties. The 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 panel.

2. The arbitral panel shall, within 180 days, or within 60 days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft report.

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

4. When the arbitral panel considers that it cannot submit its draft report within the aforementioned 180 or 60 day period, it may extend that period with the consent of the Parties.

5. A Party may provide written comments to the arbitral panel on its draft report within 15 days after the date of submission of the draft report.

6. After considering any written comments on the draft report, the arbitral panel may reconsider its draft report and make any further examination it considers appropriate.

7. The arbitral panel shall issue its final report, within 30 days after the date of submission of the draft report. The report shall include any separate opinions on matters not unanimously agreed, not disclosing which panelists are associated with majority or minority opinions.

8. The final report of the arbitral panel shall be available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information.

9. The report of the arbitral panel shall be final and binding on the Parties.

Article 21.11. Implementation of the Report

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity or the nullification or impairment in the sense of Article 21.1(c) as determined in the report of the arbitral panel, immediately, or if this is not practicable, within a reasonable period of time.

2. The Parties shall continue to consult at all times on the possible development of a mutually satisfactory resolution.

3. 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 arbitral panel referred to in Article 21.10, either Party may refer the matter to an arbitral panel as provided for in Article 21.12.7, which shall determine the reasonable period of time.

4. Where there is disagreement between the Parties as to whether the Party complained against eliminated the non-conformity or the nullification or impairment in the sense of Article 21.1(c) as determined in the report of the arbitral panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to an arbitral panel as provided for in Article 21.12.7.

Article 21.12. Non-implementation — Compensation and Suspension of Concessions or other Obligations

1. If the Party complained against notifies the complaining Party that it is impracticable, or the arbitral panel to which the matter is referred pursuant to Article 21.11.4 confirms that the Party complained against has failed to eliminate the non-conformity or the nullification or impairment in the sense of Article 21.1(c) as determined in the report of the arbitral panel within the reasonable period of time as determined pursuant to Article 21.11.3, 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 or the nullification or impairment in the sense of Article 21.1(c) as determined in the report of the arbitral panel. The suspension shall only be applied until such time as the non-conformity or the nullification or impairment in the sense of Article 21.1(c) 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 arbitral panel referred to in Article 21.10 has found a failure to comply with the obligations under this Agreement, or nullification or impairment of benefits in the sense of Article 21.1(c); 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.

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 paragraph 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitral panel.

7. The arbitral panel that is established for the purposes of this Article or Article 21.11 shall have, wherever possible, as its

panelists, the panelists of the original arbitral panel. If this is not possible, then the panelists to the arbitral panel that is established for the purposes of this Article or Article 21.11 shall be appointed pursuant to Article 21.7. The arbitral panel established under this Article or Article 21.11 shall issue its report within 60 days after the date when the matter is referred to it. When the arbitral 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 available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information. The report shall be final and binding on the Parties.

Article 21.13. Rules of Procedure

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

Article 21.14. Application and Modification of Rules and Procedures

Any time period or other rules and procedures for arbitral panels provided for in this Chapter, including the Rules of Procedure referred to in Article 21.13, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

Chapter 22. General Provisions and Exceptions

Article 22.1. General Exceptions

1. For the purposes of Chapters 3 to 7 (National Treatment and Market Access for Goods, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Regulations, Standards and Conformity Assessment Procedures), GATT 1994 Article XX and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal, or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to the conservation of living and nonliving exhaustible natural resources.

2. For the purposes of Chapters 9, 11 and 16 (Cross-Border Trade in Services, Telecommunications and Electronic Commerce (22-1)), GATS Article XTV (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in GATS Article XTV(b) include environmental measures necessary to protect human, animal, or plant life or health.

3. Nothing in this Agreement shall be construed to prevent a Party from taking action authorised by the Dispute Settlement Body of the WTO. A Party taking such action shall inform the Joint FTA Committee to the fullest extent possible of measures taken and of their termination.

(22-1) This Article is without prejudice to whether electronic transmissions should be classified as goods or services.

Article 22.2. 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;

(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 and fusionable 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, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment; or

(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 paragraphs 1(b) and (c) shall inform the Joint FTA Committee to the fullest extent possible of measures taken and of their termination.

Article 22.3. 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 either Party under any tax treaty. In the event of any inconsistency between this Agreement and any such treaty, that treaty shall prevail to the extent of the inconsistency. In the case of a tax treaty between the Parties, the competent authorities under that treaty shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that treaty.

3. Notwithstanding paragraph 2, the following Articles shall apply to taxation measures:

(a) Article 3.3 (National Treatment — National Treatment and Market Access for Goods Chapter), and such other provisions of this Agreement as are necessary to give effect to that Article, to the same extent as does GATT 1994 Article III; and

(b) Article 3.11 (Export Taxes — National Treatment and Market Access for Goods Chapter).

4. Subject to paragraph 2, the following Articles shall apply to taxation measures:

(a) Article 9.3 (National Treatment — Cross-Border Trade in Services Chapter) and Article 12.3 (National Treatment — Financial Services Chapter), only where the taxation measure is a direct tax that relates to the purchase or consumption of particular services, except that nothing in this sub-paragraph 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;

(b) Article 9.3 (National Treatment — Cross-Border Trade in Services Chapter), Article 9.4 (Most-Favoured-Nation Treatment — Cross- Border Trade in Services Chapter), Article 10.3 (National Treatment — Investment Chapter), Article 10.4 (Most-Favoured-Nation Treatment — Investment Chapter), Article 12.3 (National Treatment — Financial Services Chapter), and Article 12.4 (Most-Favoured-Nation Treatment — Financial Services Chapter), only where the taxation measure is an indirect tax; and

(c) Without prejudice to the rights and obligations of the Parties under paragraph 3, Articles 10.7.2, 10.7.3 and 10.7.4 (Performance Requirements — Investment Chapter);

except that nothing in those Articles shall apply:

(d) any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax treaty;

(e) to a non-conforming provision of any existing taxation measure;

(f) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(g) to an amendment to a non-conforming provision of any existing tax measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles (22-2);

(h) to the adoption of any non-conforming provision of a taxation measure which is substantially similar to an existing non-conforming provision of the other Party;

(i) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or

(j) to a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund or other arrangement to provide pension, superannuation or similar benefits on a requirement that the Party maintains continuous jurisdiction, regulation or supervision over such trust, fund or other arrangement.

5. Article 10.11 (Expropriation and Compensation — Investment Chapter), Article 10.16 (Submission of a Claim to Arbitration — Investment Chapter) and Chapter 21 (Dispute Settlement) shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 10.11 (Expropriation and Compensation — Investment Chapter) 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 10.11 (Expropriation and Compensation — Investment Chapter) with respect to a taxation measure must first refer to the designated authorities at the time that it gives its notice of intent under Article 10.16 (Submission of a Claim to Arbitration — Investment Chapter) the issue of whether that taxation measure involves an expropriation. If the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16 (Submission of a Claim to Arbitration — Investment Chapter).

6. For the purposes of this Article, "taxation measure" means any measure relating to direct or indirect taxes, but does not include:

(i) a customs duty; or

(ii) the measures listed in exceptions (iii) and (iv) of the definition of customs duty in Article 2.1(d).

7. For the purposes of paragraph 4, "designated authority" means:

(i) in the case of Australia, the Secretary to the Treasury or its successor, or an authorised representative of the Secretary; and

(ii) in the case of Chile, the Director del Servicio de Impuestos Internos, Ministerio de Hacienda, or an authorised representative of the Ministro de Hacienda.

(22-2) For greater certainty, such an amendment may include the adoption of an excise tax on insurance premiums in place of an income tax on insurance premiums.

Article 22.4. Restrictions to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including those related to direct investment.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

3. Any restrictive measure adopted or maintained under this Article shall be non- discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. They shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

4. The Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify them to the other Party and present, as soon as possible, a time schedule for their removal.

5. The Party applying restrictive measures shall consult promptly with the other Party within the Joint FTA Committee. Such consultations shall assess the balance of payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:

(a) the nature and extent of the balance of payments and the external financial difficulties;

(b) the external economic and trading environment of the consulting Party; and

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the Fund of the balance of payments and external financial situation of the consulting Party.

Article 22.5. 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 (22-3) or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

(22-3) For the purposes of this paragraph the public interest includes, for Australia, compliance with the Privacy Act (Cth) 1988.

Chapter 23. Final Provisions

Article 23.1. Annexes and Footnotes

The Annexes and footnotes to this Agreement constitute an integral part of this Agreement.

Article 23.2. Accession

This Agreement is open to accession, on terms to be agreed between the Parties, by any country.

Article 23.3. 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 45 days after 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 23.4. 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 on whether to amend this Agreement.

Article 23.5. Entry Into Force and Termination

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force 45 days after the date on which the Parties exchange written notifications that such procedures have been completed, or after such other period as the Parties may agree.

3. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire 180 days after the date of such notification.

Article 23.6. Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOPF, the undersigned, being duly authorised by their respective governments, have signed this Agreement.

DONE at Canberra, in duplicate, this thirtieth day of July, 2008.

FOR THE GOVERNMENT OF AUSTRALIA:

Stephen Smith

Minister for Foreign Affairs

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE:

Alejandro Foxley Rioseco

Minister of Foreign Affairs