FREE TRADE AGREEMENT BETWEEN HONG KONG, CHINA AND CHILE

The Governments of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong, China") and the Republic of Chile ("Chile"), hereinafter individually referred to as a "Party" or collectively as the "Parties":

Inspired by their longstanding friendship and cooperation and growing economic, trade and investment relationship;

Recognising that the strengthening of their economic partnership will bring economic and other benefits, create new opportunities for employment and improve the living standards of their people;

Creating an expanded and secure market for the goods and services of the Parties;

Resolved to promote bilateral trade through the establishment of clear and mutually advantageous trade rules and the avoidance or removal of trade barriers;

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

Building on their respective rights, obligations and undertakings under the WTO, and other multilateral, plurilateral and bilateral agreements and arrangements applicable to them;

Recalling the APEC goal of free and open trade and investment; Aware of the growing importance of trade and investment for the economies of the Asia-Pacific region;

Desiring to strengthen the bilateral relationship through further liberalising trade in goods, services and investment; and

Mindful that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and that closer economic partnership can play an important role in promoting sustainable development;

Have agreed as follows:

Chapter 1. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

The Parties, consistent with Article XXIV of GATT 1994 and Article V of GATS, hereby establish a free trade area.

Article 1.2. Relation to other Agreements

1. Nothing in this Agreement shall derogate from the existing rights and obligations of either Party under the WTO Agreement or any other international agreement to which it is a party or which is applicable to its Area.

2. In the event of any inconsistency between this Agreement and any other international agreement to which the Parties are party or which is applicable to the Areas of the Parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of public international law.

Chapter 2. General Definitions and Interpretations

Article 2.1. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

Agreement means the Free Trade Agreement between Hong Kong, China and Chile;

APEC means Asia-Pacific Economic Cooperation;

Area in respect of:

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

(b) Hong Kong, China means the Hong Kong Special Administrative Region of the People's Republic of China, together with such other area(s) over which the Hong Kong Special Administrative Region may be authorised to exercise jurisdiction in accordance with laws of the Hong Kong Special Administrative Region;

Commission means the Free Trade Commission established under Article 16.1;

Committee on Trade in Goods means the Committee on Trade in Goods established under Article 3.11;

Customs authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations and:

(a) In the case of Chile, means the Chile Customs Service; and

(b) In the case of Hong Kong, China, means the Customs and Excise Department;

Customs duties means duties or charges of any kind imposed in connection with the importation of goods but shall not include:

(a) Charges equivalent to internal taxes, including excise duties, sales tax, and goods and services taxes, imposed in accordance with Article III.2 of GATT1994;

(b) Anti-dumping, countervailing or safeguards duty applied in accordance with Chapter 8 (Trade Remedies); or

(c) Fees or other charges that are covered by Article VIII of GATT 1994;

Days means calendar days, including weekends and holidays;

GATS mean the General Agreement on Trade in Services, which is part of the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade1994, which is part of the WTO Agreement;

Harmonized System or 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 applied by the Parties in their respective laws;

Juridical person means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

Juridical person of a Party means a juridical person organised or constituted under the laws of a Party, and a branch located in the Area of a Party;

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;

Natural person means:

(a) In the case of Chile, a natural person who has the Chilean nationality as defined in Article 10 of the Constitución Política de la República de Chile or a permanent resident of Chile; and

(b) In the case of Hong Kong, China, a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China under its domestic law; originating means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin);

SCM Agreement means the Agreement on Subsidies and Countervailing Measures, which is part of the WTO Agreement;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement;

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

WTO means the World Trade Organization;

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

WTO Dispute Settlement Understanding means the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

Article 2.2. Interpretations

In this Agreement, unless the context otherwise requires:

(a) In the case of Hong Kong, China, where an expression is qualified by the term "national", such expression shall be interpreted as pertaining to Hong Kong, China; and

(b) Where anything under this Agreement is to be done within a number of days after, before or of a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

Chapter 3. TRADE IN GOODS

Article 3.1. Definitions

For the purposes of this Chapter:

Agreement on Agriculture means the Agreement on Agriculture, which is part of the WTO Agreement;

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

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture;

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

import licensing means administrative procedures 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 Area of the importing Party.

Article 3.2. Scope

Except as otherwise provided, this Chapter shall apply to trade in all goods between the Parties.

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. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 3.4. Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party.

2. Except as otherwise provided in this Agreement, and subject to each Party’s Tariff Schedule in Annex 3.4, as at the date of entry into force of this Agreement, each Party shall eliminate its customs duties on originating goods of the other Party.

3. If a Party reduces its applied most-favoured-nation customs duty rate after the entry into force of this Agreement and before the end of the tariff elimination period, the Tariff Schedule in Annex 3.4 of that Party shall apply with respect to the new most-favoured-nation customs duty rate.

4. At the request of either Party, the Parties shall consult each other to consider accelerating the reduction or elimination of customs duties set out in their Tariff Schedules in Annex 3.4. An agreement between the Parties to accelerate the reduction

or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Tariff Schedules in Annex 3.4 for such good. Such agreement shall be subject to the amendment procedures under Article 16.1.4 (b) (i).

Article 3.5. Fees and Charges Connected with Importation and Exportation

1. The Parties agree that fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods shall be consistent with their obligations under GATT 1994.

2. Each Party shall make available through the internet or a comparable computer-based telecommunications network details of the fees and charges it imposes in connection with importation and exportation.

3. Neither Party may require legalisation of:

(a) commercial invoices;

(b) certificates of origin; or

(c) other customs documentation,

including related fees or charges, in connection with the importation of any good of the other Party.

Article 3.6. Non-Tariff Measures

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the Area of the other Party except in accordance with its WTO rights and obligations.

2. For greater certainty, neither Party shall adopt or maintain any prohibition or restriction on the importation or exportation of any good except in accordance with Article XI of GATT 1994 and its interpretative notes.

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

4. The non-tariff measures referred to in paragraphs 1, 2 and 3 include:

(a) export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping orders and undertakings;

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

(c) voluntary export restraints.

5. Paragraphs 1, 2, 3 and 4 shall not apply, with respect to Chile, to measures concerning the importation of used vehicles, as provided in Law No 18.483 or its successor.

Article 3.7. Price Band System

Chile may maintain its price band system as established under its Law No 18.525 or succeeding system for the products covered by that law, (1) to be applied in a manner consistent with Chile's rights and obligations under the WTO Agreement.

(1) The products covered by the price band system are HS (2012) 1001.9100, 1001.9911, 1001.9912,1001.9913, 1001.9919, 1001.9921, 1001.9922, 1001.9923, 1001.9929, 1001.9931, 1001.9932, 1001.9933, 1001.9939, 1001.9941, 1001.9942, 1001.9943, 1001.9949, 1001.9951, 1001.9952, 1001.9953, 1001.9959, 1001.9961, 1001.9962, 1001.9963, 1001.9969, 1001.9971, 1001.9972, 1001.9973, 1001.9979, 1001.9991, 1001.9992, 1001.9993, 1001.9999, 1101.0000, 1701.1200, 1701.1300, 1701.1400, 1701.9100, 1701.9910, 1701.9920 and 1701.9990.

Article 3.8. Subsidies

The Parties maintain their rights and obligations regarding subsidies under Article XVI of GATT 1994 and the SCM Agreement.

Article 3.9. Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of all forms of export subsidies for agricultural goods and shall cooperate in an effort to achieve such an objective and prevent their reintroduction in any form.

2. Neither Party shall introduce or maintain any forms of export subsidy on any agricultural good destined for the Area of the other Party.

Article 3.10. Geographical Indications

1. Each Party shall ensure in its domestic law adequate and effective means to protect geographical indications with regard to all goods in a manner consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

2. Each Party shall provide the means for any person, including natural persons, corporate entities or government agencies of the other Party, to apply for protection of geographical indications. Each Party shall accept applications without the requirement for intercession by the other Party on behalf of its persons.

3. The terms listed in Annex 3.10 are geographical indications under the domestic laws and regulations of Chile.

4. Subject to the domestic laws and regulations of Hong Kong, China, a term listed in Annex 3.10 may receive relevant protection on intellectual property in Hong Kong, China. (2)

(2) Under the Trade Marks Ordinance of Hong Kong, China, a term listed in Annex 3.10 may receive protection if it is registered and the registration remains valid in accordance with that Ordinance.
For greater certainty, any application for the registration of the terms listed in Annex 3.10 will be processed in accordance with the domestic laws and regulations of Hong Kong, China.
This Article shall also not preclude Hong Kong, China from accepting an application for trade mark registration of a mark consisting of or similar to a term listed in Annex 3.10 where the relevant requirements for registration are fulfilled.
Further, this Article shall not be construed to impose any obligation on Hong Kong, China to amend its domestic laws and regulations or affect its international position in relation to intellectual property.

Article 3.11. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods (“the Committee”), comprising representatives of each Party.

2. The Committee shall meet at the request of either Party or the Commission to consider any matter arising under this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures and Cooperation) or Chapter 8 (Trade Remedies). Meetings of the Committee may be conducted in person or via teleconference, videoconference or any other means agreed by the Parties.

3. The Committee’s functions shall include:

(a) reviewing and monitoring the implementation of the Chapters referred to in paragraph 2;

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures other than measures covered under Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade);

(c) establishing any working groups, as and when necessary;

(d) referring matters considered by the Committee to the Commission where the Committee considers this appropriate;

(e) carrying out other functions as may be delegated by the Commission in accordance with Chapter 16 (Administration); and

(f) reporting the findings and the outcome of discussions to the Commission.

4. The Committee will consider reports issued by the Sub-Committees established under Article 6.10 and Article 7.11.

Chapter 4. RULES OF ORIGIN

Section 1. RULES OF ORIGIN

Article 4.1. Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

CIF means the value of the good imported inclusive of the cost of insurance and freight up to the port or place of entry in the importing Party;

Declaration of Origin means a statement as to the origin of the goods made by the exporter of the exporting Party for the purposes of this Agreement, in the form specified in Annex 4.15;

FOB means free-on-board value of the good inclusive of the cost of transport to the port or site of final shipment abroad;

generally accepted accounting principles means the accounting standards of a Party with respect to:

(a) the recording of revenues, expenses, costs, assets and liabilities; (b) the disclosure of information; and

(c) the preparation of financial statements.

These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

identical or interchangeable materials are goods or materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;

material means a good or any matter or substance used or consumed in the production or transformation of a good or physically incorporated into a good subjected to a process in the production of another good;

non-originating good or non-originating material means a good or material which does not qualify as originating under this Chapter;

originating good or originating material means a good or material which qualifies as originating in accordance with Article 4.2;

preferential tariff treatment means the rate of customs duties of the importing Party applicable to originating goods of the exporting Party;

producer means a person who grows, cultivates, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good; and

production means methods of obtaining goods, including growing, cultivating, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, farming, trapping, hunting, manufacturing, processing or assembling a good.

Article 4.2. Originating Goods

For the purposes of this Chapter, a good shall qualify as an originating good if it:

(a) is wholly obtained or produced in the Area of a Party as provided for in Article 4.4;

(b) is produced entirely in the Area of one or both Parties exclusively from originating materials from one or both Parties; or

(c) is produced in the Area of one or both Parties using non-originating materials that conform to a change in tariff classification requirement, a regional value content requirement (as provided for in Article 4.5) or other requirements as specified in Annex 4.2;
and the good meets the other applicable provisions of this Chapter.

Article 4.3. Preferential Tariff Treatment

Preferential tariff treatment provided for in this Agreement shall be applied to goods that qualify as originating goods in accordance with Article 4.2 and other applicable provisions of this Chapter.

Article 4.4. Wholly Obtained or Produced Goods

For the purposes of Article 4.2 (a), the following goods shall be considered as wholly obtained or produced:

(a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in the Area of a Party;

(b) live animals born and raised in the Area of a Party;

(c) goods obtained from live animals in the Area of a Party;

(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in the Area of a Party;

(e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or subsoil, in the Area of a Party;

(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered in a Party and entitled to fly the flag of that Party in accordance with the United Nations Convention on the Law of the Sea 1982 (“UNCLOS”);

(g) goods processed or produced on board any factory ship registered in a Party and entitled to fly the flag of that Party in accordance with UNCLOS from the goods referred to in subparagraph (f);

(h) goods extracted or taken by a Party, or a person of a Party, from the seabed or subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction, under exploitation rights granted in accordance with international law;

(i) goods which are:

(i) waste and scrap derived from production or consumption in the Area of a Party provided that such goods are fit only for the recovery of raw materials; or

(ii) used goods collected in the Area of a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods obtained or produced in the Area of a Party solely from goods referred to in subparagraphs (a) to (i) or from their derivatives.

Article 4.5. Regional Value Content

For the purposes of this Chapter, the formula for calculating the regional value content (“RVC”) shall be:

RVC = [(FOB - value of non-originating materials) /FOB] x 100 %
where:

(a) FOB is the value of the good as defined in Article 4.1; and

(b) value of non-originating materials is the CIF at the time of importation or the earliest ascertained price paid or payable in the Area of the Party where the production takes place for all non- originating materials, parts or produce that are acquired by the producer in the production of the good. When the producer of a good acquires non-originating materials within that Party the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier’s warehouse to the producer’s location. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

Article 4.6. Accumulation

Originating goods or materials from the Area of a Party, incorporated into a good in the Area of the other Party, shall be considered to originate in the Area of the other Party.

Article 4.7. Minimal Operations or Processes

1. Operations or processes undertaken by themselves or in combination with each other for purposes such as those listed below are considered to be minimal and shall not confer origin:

(a) ensuring preservation in good condition for the purposes of transport or storage, such as drying, freezing, ventilation, chilling and like operations;

(b) facilitating shipment or transportation;

(c) packaging or presenting goods for sale;

(d) affixing of marks, labels or other like distinguishing signs on goods or their packaging;

(e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling, sharpening, simple grinding, slicing and other similar operations;

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(g) cleaning, including removal of oxide, oil, paint or other coverings;

(h) simple painting and polishing operations;

(i) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(j) simple mixing of goods, whether or not of different kinds;

(k) simple assembly of parts of goods to constitute a complete good; and

(l) changes of packing, unpacking or repacking operations, and breaking up and assembly of consignments.

2. For the purposes of paragraph 1:

simple generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity; and

simple mixing generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

3. Where a RVC approach has been applied, minimal processes or operations referred to in paragraph 1 shall be taken into account for the RVC calculation.

Article 4.8. De Minimis

Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.2 is nonetheless an originating good if:

(a) the value of all non-originating materials, including materials of undetermined origin, used or consumed in the production of the good that do not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; and

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

Article 4.9. Direct Consignment

A good shall retain its originating status as determined under Article 4.2 if the following conditions have been met:

(a) the good has been transported to the importing Party without passing through the territory of any non-Party; or

(b) the good has transited through one or more non-Parties, with or without transhipment or temporary storage in those non-Parties, provided that:

(i) the good has not entered trade or commerce there; and

(ii) the good has not undergone any operation there other than unloading and reloading, repacking, splitting up or bulk

breaking, or any operation required to preserve it in good condition or to transport it to the importing Party.

Article 4.10. Treatment of Packing Materials and Containers

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

2. Packing 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 requirements for the good.

3. If a good is subject to a RVC requirement, the value of the packing materials and containers 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 RVC of the good.

Article 4.11. Accessories, Spare Parts, Tools and Instructional or Information Material

1. For the purpose of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good 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, provided that:

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

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

2. Notwithstanding paragraph 1, if a good is subject to a RVC requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Article 4.12. Indirect Materials

1. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

2. For the purposes of this Article, indirect material means a good used or consumed in the production, testing or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies and moulds;

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

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

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

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

(g) catalysts and solvents; and

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

Article 4.13. Identical and Interchangeable Materials

In determining whether a good is an originating good, any identical or interchangeable materials shall be distinguished by:

(a) physical separation of the goods; or

(b) an inventory management method recognised in the generally accepted accounting principles of the exporting Party.

Section 2. OPERATIONAL PROCEDURES

Article 4.14. Treatment of Goods for Which Preference Is Claimed

Each Party may require a Declaration of Origin of a good for which preferential tariff treatment is claimed. Where a Party requires a Declaration of Origin of a good, the importing Party shall grant preferential tariff treatment to goods imported into its Area from the other Party only in cases where an importer claiming preferential tariff treatment:

(a) provides a Declaration of Origin of the good in accordance with this Chapter; and

(b) provides other evidence to substantiate the origin of the goods, upon request.

Article 4.15. Declaration of Origin

1. The Declaration of Origin:

(a) shall be completed in English;

(b) may be made in respect of one or more goods in the shipment; and

(c) shall be in conformity to the form as specified in Annex 4.15.

2. A Declaration of Origin shall be valid for 1 year from the date of issuance.

3. The Parties shall seek the possibility to implement a system of electronic Declaration of Origin. The Committee on Trade in Goods will evaluate a time- frame for its implementation.

Article 4.16. Exceptions from Declaration of Origin

1. An importing Party may waive the requirement for a Declaration of Origin to admit goods pursuant to tariff preference where:

(a) the customs value of the importation does not exceed US$1,000 or the equivalent amount in the Party’s currency or a higher amount as it may establish;

(b) the goods are for personal use forming part of the personal luggage of a traveller; or

(c) in respect of specific goods, the importing Party has waived the requirement for a Declaration of Origin.

2. Where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirement for a Declaration of Origin, the customs authority of the importing Party may deny preferential tariff treatment.

Article 4.17. Records

1. Each Party shall inform exporters in its Area that they should maintain for a period of not less than 3 years after the issuance of the Declaration of Origin, all records relating to that exportation which are necessary to demonstrate to the importing Party that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment under this Agreement.

2. All records identified in paragraph 1 may be maintained in paper or electronic form.

Article 4.18. Compliance with Direct Consignment

Compliance with Article 4.9 may be evidenced by means of supplying to the customs authority of the importing Party either customs documents of a non- Party or documents of the relevant authorities of a non-Party or commercial shipping or freight documents.

Article 4.19. Non-Party Invoicing

1. The customs authority of the importing Party shall accept a Declaration of Origin in cases where the invoice is issued by a company located in a non-Party, provided that the goods meet the requirements of Section 1.

2. The exporter shall indicate “Non-Party invoicing” in the Declaration of Origin.

Article 4.20. Verification of Origin

1. For the purposes of determining whether a good imported into its Area from the Area of the other Party qualifies as an originating good, the customs authority of the importing Party should conduct a verification of eligibility for preferential tariff treatment by means of:

(a) requests for information to the importer;

(b) requests for information to the exporter or producer in the Area of the other Party on the basis of a Declaration of Origin through the customs authority of the other Party;

(c) requests for information to the customs authority of the other Party;

(d) requests for visits to the factory or premises of an exporter or producer in the Area of the other Party in accordance with Article 4.21; or

(e) such other procedures as the customs authorities of the Parties may agree.

2. Any such verification activities shall only be undertaken if:

(a) there are reasonable grounds to doubt the accuracy or authenticity of the Declaration of Origin, or the origin status of the goods concerned; or

(b) the purpose is to ascertain the fulfilment of any other requirement of this Chapter.

3. Any request that is made pursuant to paragraphs 1(b), 1(c) and 1(d) shall

specify the reasons, and any documents and information supporting the request shall be forwarded to the customs authority of the exporting Party.

4. All requests for information shall be accompanied by sufficient information to identify the good about which the request is made.

5. For the purposes of paragraph 1(b), the exporter or producer shall provide the information requested, to the customs authority of the importing Party, within a period of 90 days from the date of receipt of the request from the customs authority of the exporting Party.

6. The customs authority of the importing Party shall complete any action to verify eligibility for preferential tariff treatment within 270 days from the commencement of the conduct of verification pursuant to paragraph 1, 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 from the date of completion of such action.

Article 4.21. Exporter or Producer Visit

1. The customs authority of the importing Party, through the customs authority of the exporting Party, may request the exporter to:

(a) subject to the consent of the exporter, permit the customs authority of the importing Party to visit the factory or premises of the exporter in company with the customs authority of the exporting Party;

(b) subject to the consent of the producer, arrange a visit to the factory or premises of the producer in company with the customs authority of the exporting Party, if the exporter is not the producer; and

(c) provide information relating to the origin of the good.

2. Prior to conducting a visit pursuant to paragraph 1, the customs authority of the importing Party shall issue a written communication with such a request to the exporter through the customs authority of the exporting Party in advance of the proposed date of the visit.

3. The customs authority of the importing Party shall not visit the factory or premises of any exporter or producer in the Area of the exporting Party without written prior consent from the exporter or producer given through the customs authority of the exporting Party.

4. For the purposes of paragraph 2, the written communication shall at a minimum include:

(a) the identity of the customs authority 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, reference number of the Declarations of Origin and specific reference to the good subject to the visit referred to in the Declarations of Origin; and

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

Article 4.22. Denial of Preferential Tariff Treatment

1. Either Party may deny preferential tariff treatment for a good when:

(a) the good does not qualify as an originating good pursuant to this Chapter;

(b) the importer, exporter or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 4.20, or otherwise fails to comply with any of the relevant requirements of this Chapter; or

(c) under Article 4.20, no reply within 270 days from the date of the verification request was received from the customs authority of the exporting Party or if the reply does not contain sufficient information to determine the authenticity of the document in question or the origin of the goods.

2. In the event preferential tariff treatment is denied, the importing Party shall ensure that its customs authority provides in writing to the exporter, the importer or producer, as the case may be, the reasons for that decision.

Article 4.23. Refund of Import Duties

Where a Declaration of Origin is not provided at the time of importation of a good from a Party pursuant to Article 4.14, the importing Party may impose the applied non-preferential import customs duty or require payment of a deposit on that good, where applicable. In such a case, the importer may apply for a refund of any excess import customs duty or deposit paid within 1 year of the date on which the good was imported, provided that:

(a) a written declaration that the good presented qualifies as an originating good was provided to the customs authority of the importing Party at the time of importation;

(b) the Declaration of Origin is provided; and

(c) other documentation relating to the importation of the good as the customs authority of the importing Party may require is provided.

Chapter 5. CUSTOMS PROCEDURES AND COOPERATION

Article 5.1. Definitions

For the purposes of this Chapter:

customs law means any domestic laws and regulations administered, applied or enforced by the customs authority of a Party;

customs procedures means the treatment applied by the customs authority to goods that are subject to customs control;

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

express consignments means all goods imported by an enterprise operating a consignment service for the expeditious international movement of goods that assumes liability to the customs authority for those goods.

Article 5.2. Objectives and Scope

1. The objectives of this Chapter are to:

(a) simplify and harmonise customs procedures of the Parties;

(b) ensure predictability, consistency and transparency in the application of customs laws and administrative procedures of the Parties;

(c) ensure the efficient and expeditious clearance of goods and means of transport;

(d) facilitate trade between the Parties; and

(e) promote cooperation between the customs authorities, within the scope of this Chapter.

2. This Chapter shall apply, in accordance with the Parties' respective international obligations and customs laws, to customs procedures applied to goods traded between the Parties.

Article 5.3. Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, in accordance with this Chapter.

2. Customs procedures of each Party shall, where possible, conform to the standards and recommended practices of the World Customs Organization, including those of the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), known as the Revised Kyoto Convention.

3. Customs authorities of the Parties shall facilitate the clearance of goods in administering their customs procedures in accordance with this Chapter.

4. Each customs authority shall provide one or more focal points, electronic or otherwise, through which its traders may submit all information as may be required by the customs authority in respect of the importation of goods.

Article 5.4. Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 5.5. Tariff Classification

Each Party shall apply the International Convention on the Harmonized Commodity Description and Coding System to goods traded between the Parties.

Article 5.6. Advance Rulings

1. Each customs authority shall, subject to its customs law, provide, in writing, advance rulings in respect of the tariff classification and origin of goods ("advance rulings") to an exporter, importer or any person making an application ("applicant") as described in paragraph 2.

2. Subject to its customs law, each Party shall endeavour to develop procedures for advance rulings, which shall provide that an applicant with a justifiable cause may apply for an advance ruling in accordance with this Agreement before the importation of the goods in question.

3. Notwithstanding paragraph 1, a Party may reject an application for an advance ruling by promptly notifying the applicant in writing, setting forth the basis for its decision to decline to issue the advance ruling.

4. Each Party shall provide that advance rulings take effect on the date they are issued, or on another date specified in the ruling. A Party may limit the validity of advance rulings to a period determined by its customs law.

5. A Party may modify or revoke an advance ruling:

(a) upon a determination that the advance ruling was based on an error of fact or of law, or the information provided is false or inaccurate;

(b) if there is a change in customs law which is consistent with this Agreement; or

(c) if there is a change in a material fact, or circumstances on which the ruling is based.

Article 5.7. Use of Automated Systems

The customs authority of each Party shall apply information technology to support customs operations where it is practicable, cost-effective and efficient, particularly in the paperless trading context, taking into account developments on this issue within the World Customs Organization.

Article 5.8. Express Consignments

Each customs authority shall adopt procedures to expedite the clearance of express consignments while maintaining appropriate control, including:

(a) to provide for pre-arrival processing of information related to express consignments;

(b) to permit the submission of a single document covering all goods contained in an express consignment, through electronic means if possible; and

(c) to minimise, to the extent possible, the documentation required for the release of express consignments.

Article 5.9. Release of Goods

Each Party shall adopt or maintain procedures which allow goods to be released within 48 hours of arrival, and at the point of arrival without temporary transfer to warehouses or other locations, unless:

(a) the importer fails to provide any information required by the importing Party at the time of first entry;

(b) the goods are selected for closer examination by the customs authority of the importing Party through the application of risk management techniques;

(c) the goods are to be examined by an agency, other than the customs authority of the importing Party, acting under powers conferred by the domestic laws and regulations of the importing Party; or

(d) the fulfilment of all necessary customs formalities has not been able to be completed or the release is otherwise delayed by virtue of force majeure.

Article 5.10 . Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods.

2. To enhance the flow of goods across their borders, the customs authority of each Party shall regularly review its customs procedures.

Article 5.11. Review and Appeal

Each Party shall ensure that exporters, importers, and persons affected by customs administrative rulings, determinations or decisions have the right to at least one level of administrative or judicial review or appeal in accordance with its domestic law.

Article 5.12. Customs Cooperation

1. To the extent permitted by their domestic laws and regulations, the customs authorities of the Parties shall assist each other by providing information in relation to:

(a) the implementation and operation of this Chapter and, as appropriate, Chapter 4 (Rules of Origin);

(b) security of trade between the Parties; and

(c) such other issues as the Parties mutually determine.

2. Each customs authority shall provide the other customs authority with timely notice of any modification of its customs law or procedures that is likely to substantially affect the operation of this Chapter.

Article 5.13. Publication and Enquiry Points

1. Each customs authority shall publish, on the internet or in print form, its customs law and any administrative procedures it applies or enforces.

2. Each customs authority shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other customs authority. Customs authorities of the Parties shall notify each other promptly of any amendments to the details of their enquiry points.

Chapter 6. SANITARY AND PHYTOSANITARY MEASURES

Article 6.1. Definitions

1. For the purposes of this Chapter, the definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, mutatis mutandis.

2. The relevant definitions developed by Codex Alimentarius Commission (“Codex”), the World Organization for Animal Health (“OIE”) and under the framework of the International Plant Protection Convention (“IPPC”) shall apply in the implementation of this Chapter.

Article 6.2. Objectives

The objectives of this Chapter are to:

(a) facilitate bilateral trade between the Parties, while protecting human, animal or plant life or health in the Area of each Party;

(b) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by Codex, OIE and under the framework of the IPPC;

(c) provide a means to resolve, where possible, problems arising from sanitary and phytosanitary measures that may affect trade, and to expand trade opportunities;

(d) provide a means to improve communication, consultation and cooperation between the Parties on sanitary and phytosanitary matters; and

(e) strengthen collaboration between the Parties in relevant international bodies that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 6.3. Scope

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

Article 6.4. Rights and Obligations

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

Article 6.5. Transparency and Exchange of Information

1. The Parties confirm their commitments to implementing the transparency provisions set out in Article 7 and Annex B of the SPS Agreement and relevant Decisions and Recommendations on transparency adopted by the WTO Committee on Sanitary and Phytosanitary Measures.

2. Each Party shall notify the other in a timely and appropriate manner in writing through the contact points of any significant food safety issue or change in animal health, plant health or pest status in its Area that is relevant to existing trade.

Article 6.6. Equivalence

Each Party may make determinations of equivalence consistent with the SPS Agreement and in particular with its Article 4, relevant Decisions and Recommendations on equivalence adopted by the WTO Committee on Sanitary and Phytosanitary Measures, and relevant international standards, guidelines and recommendations from the relevant international organisations stated in the SPS Agreement.

Article 6.7. Adaptation to Regional Conditions

Each Party may make determinations in relation to regionalisation, pest- free areas, areas of low pest prevalence, zoning and compartmentalisation consistent with the SPS Agreement and in particular with its Article 6, relevant Decisions and Recommendations adopted by the WTO Committee on Sanitary and Phytosanitary Measures, and relevant international standards, guidelines and recommendations from the relevant international organisations stated in the SPS Agreement.

Article 6.8. Cooperation

1. The Parties agree to cooperate to facilitate the implementation of this Chapter.

2. The Parties may explore opportunities for further cooperation, collaboration and information exchange on sanitary or phytosanitary matters of mutual interest consistent with this Chapter, including in relevant international standard-setting bodies.

Article 6.9. Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in Annex 6.9.1

2. The contact points that have the responsibility relating to communications between the Parties under this Chapter are set out in Annex 6.9.2.

3. The Parties shall inform each other of any significant change in the structure, organisation and division of responsibility of the competent authorities or contact points.

Article 6.10. Sub-Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Measures (“Sub-Committee on SPS”) under the Committee on Trade in Goods.

2. The Sub-Committee on SPS shall be comprised of representatives of each Party who have responsibilities for the development, implementation and enforcement of sanitary and phytosanitary measures.

3. The objective of the Sub-Committee on SPS is to facilitate effective implementation of this Chapter by providing a forum for:

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

(b) discussing matters related to the development or application of sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect human, animal and plant health and trade between the Parties;

(c) addressing any bilateral issues arising from the implementation of sanitary and phytosanitary measures between the Parties;

(d) reviewing progress on addressing bilateral issues arising from the implementation of sanitary and phytosanitary measures between the Parties;

(e) coordinating technical cooperation programmes on sanitary and phytosanitary measures;

(f) exchanging views on issues relating to the meetings of the WTO Committee on Sanitary and Phytosanitary Measures, Codex, OIE and IPPC; and

(g) holding consultations on the disputes concerning sanitary and phytosanitary matters. (3)

4. The Sub-Committee on SPS may meet at such venues and time as may be agreed by the Parties.

5. The Sub-Committee on SPS may meet in person, unless both Parties mutually agree otherwise, in which case it may meet via teleconference, videoconference or any other means that allow the fulfilment of its objectives.

6. The terms of reference of the Sub-Committee on SPS shall be determined in its first meeting.

7. The Sub-Committee on SPS shall seek to enhance and ensure cooperation between the Parties' agencies with responsibility for sanitary and phytosanitary measures.

8. The Sub-Committee on SPS shall report its activities to the Committee on Trade in Goods.

(3) It is understood that consultations held pursuant to paragraph 3(g) shall be without prejudice to the rights and obligations of the Parties under Chapter 17 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Article 6.11. Consultations

1. At the request of a Party for consultations on any matter arising under this Chapter, the Parties shall enter into consultations. A request for consultations shall be made through the contact points listed in Annex 6.9.2

2. Consultations shall be carried out within 30 days of receiving the request for consultations given by the requesting Party, unless otherwise agreed by the Parties. Such consultations may be conducted via teleconference, videoconference or any other means agreed by the Parties.

3. The consultations under this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 17 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Chapter 7. TECHNICAL BARRIERS TO TRADE

Article 7.1. Definitions

1. For the purposes of this Chapter, TBT Agreement means the Agreement on Technical Barriers to Trade, which is part of the WTO Agreement.

2. The definitions in Annex 1 of the TBT Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*.

Article 7.2. Objectives

The objectives of this Chapter are to increase and facilitate trade by preventing and eliminating unnecessary obstacles to trade and enhancing bilateral cooperation in accordance with the rights and obligations of the Parties with respect to the TBT Agreement.

Article 7.3. Scope

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

2. Purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies are not subject to this Chapter but are addressed in Chapter 9 (Government Procurement), according to its coverage.

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

Article 7.4. Affirmation of TBT Agreement

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

Article 7.5. International Standards

1. The Parties shall use international standards, guides and recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 and Annex 3 of the TBT Agreement, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards, guides and recommendations exist or their completion is imminent, except when they or their relevant parts are ineffective or inappropriate to fulfil the legitimate objectives.

2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in relevant Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since January 1st, 1995.

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, to identify 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. Equivalence of Technical Regulations

1. Consistent with the TBT Agreement, 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 that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. A Party shall, at the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

Article 7.8. Conformity Assessment Procedures

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

(a) accepting the declaration of conformity by a supplier in the Area of the other Party, preferably with the proof from accreditation agencies, where appropriate;

(b) promoting recognition of cooperative arrangements between accreditation bodies located in the Areas of the Parties;

(c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the Areas of the Parties;

(d) implementing unilateral recognition by one Party of the results of conformity assessment procedures performed in the Area of the other Party with respect to specific technical regulations;

(e) recognising accreditation procedures of the other Party for qualifying conformity assessment bodies in the Area of that Party;

(f) designating conformity assessment bodies located in the Area of the other Party;

(g) facilitating the consideration of a request by the other Party to recognise the results of conformity assessment procedures conducted by bodies in the Area of the other Party, including through negotiation of agreements in a sector nominated by that other Party; and

(h) utilising relevant international multilateral recognition agreements and arrangements.

2. The Parties shall exchange information on the mechanisms referred in paragraph 1 and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

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

4. Each Party shall give positive consideration to a request by the other Party to negotiate and conclude arrangements to facilitate recognition of the results of conformity assessment procedures conducted by bodies located in the Area of the other Party. Where a Party declines such a request, it shall, at the request of that other Party, explain the reasons for its decision.

Article 7.9. Transparency

1. Each Party shall ensure that the information relating to technical regulations and conformity assessment procedures is published. Such information should be made available in printed or electronic form.

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

3. 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 established under Article 10 of the TBT Agreement.

4. Each Party shall discuss comments received under paragraph 2 with the other Party upon request.

5. At the 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. Technical Cooperation

1. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties shall cooperate in the areas of standards, technical regulations and conformity assessment procedures, on a case-by-case basis, including to:

(a) promote good regulatory practice based on risk management principles;

(b) improve the quality and effectiveness of their technical regulations;

(c) develop joint initiatives for managing risks to health, safety and the environment; and

(d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall implement this Article by establishing work programmes to, inter alia:

(a) exchange information on, inter alia:

(i) regulatory systems;

(ii) incident analysis;

(iii) hazard alerts;

(iv) product bans and recalls; and

(v) procedures, strategies and programmes for product surveillance activities; and

(b) cooperate as mutually determined, on, inter alia:

(i) the development of technical regulations;

(ii) regulatory reviews and implementation; and

(iii) the development and implementation of risk management principles, including product monitoring, safety, compliance and enforcement procedures.

Article 7.11. Institutional Arrangements

1. In order to facilitate communication, each Party shall designate a contact point and exchange the contact details of relevant officials of that contact point, including information on telephone, facsimile, e-mail and other relevant details, no later than 2 months following the date of entry into force of this Agreement.

2. Each Party shall notify the other Party promptly of any change of its contact point or any amendments to the information of the relevant officials.

3. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade ("Sub-Committee on TBT") under the Committee on Trade in Goods to promote and monitor the implementation and administration of this Chapter. The Sub-Committee on TBT shall be comprised of officials from the contact points designated under paragraph 1 and any other representatives of the Parties.

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

(a) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards, technical regulations or conformity assessment procedures by the other Party;

(b) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;

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

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

(e) exploring any means aimed at improving access to the Parties' respective markets through elimination of unnecessary technical barriers to trade and enhancing the functioning of this Chapter;

(f) consulting (4) on any matter arising under this Chapter, at a Party's request; and

(g) addressing any matter related to the effective functioning of this Chapter, including the monitoring, implementation and reviewing of this Chapter, in light of any developments under the TBT Agreement.

5. The Sub-Committee on TBT may meet at such venues and time as may be agreed by the Parties. Meetings may also be held via teleconference, videoconference or any other means agreed by the Parties.

6. The Sub-Committee on TBT may, by mutual agreement between the Parties, establish ad hoc working groups to undertake responsibilities or carry out functions set out in paragraph 4 if necessary.

7. The terms of reference of the Sub-Committee on TBT shall be determined in its first meeting.

8. The Sub-Committee on TBT shall report its activities to the Committee on Trade in Goods.

(4) It is understood that consultations held pursuant to paragraph 4 (f) shall be without prejudice to the rights and obligations of the Parties under Chapter 17 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Article 7.12. Annexes and Implementing Arrangements

1. The Parties, in accordance with Article 16.1.4 (b) (iii), may conclude or amend Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment procedures applicable to trade between them.

2. The Parties may develop implementing arrangements setting out details for the implementation of Annexes referred to in paragraph 1, or arrangements made in relation to any work under this Chapter.

3. The Parties shall seek to incorporate any existing arrangements concerning technical regulations and conformity assessment procedures that are specifically applicable to trade between the Parties into the Annexes and implementing arrangements.

Chapter 8. TRADE REMEDIES

Article 8.1. Countervailing Measures

1. The Parties maintain their rights and obligations regarding countervailing measures under Article VI of GATT 1994 and the SCM Agreement.

2. Except as otherwise provided in paragraph 3, 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 SCM Agreement with regard to the application of countervailing measures.

3. Before an investigation is initiated by a Party to determine the existence, degree and effect of any alleged subsidy in the other Party, as provided for in Article 11 of the SCM Agreement, the Party considering the initiation of an investigation shall notify in writing the other Party whose products may be subject to such investigation and invite the other Party for consultations with a view to finding a mutually acceptable solution. Consultations must be held as soon as possible but no later than 30 days from the date of receipt of the notification by the other Party, unless the Parties agree to a longer period. (5)

(5) It is understood that: (a) consultations held pursuant to paragraph 3 shall be without prejudice to the rights and obligations of the Parties under Chapter 17 (Dispute Settlement) or under the WTO Dispute Settlement Understanding; and (b) a Party can initiate an investigation before the consultations have been completed.

Article 8.2. Global Safeguard Measures

1. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards ("Safeguards Agreement").

2. Except as otherwise provided in paragraph 3, this Agreement does not confer additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

3. A Party shall promptly notify the other Party of the initiation of any global safeguard investigation and the reasons for initiation. Such notification shall be made in no case later than 7 days upon such initiation.

Article 8.3. Anti-dumping Measures

1. The Parties maintain their rights and obligations regarding anti-dumping measures under Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994 ("AD Agreement").

2. Except as otherwise provided in paragraph 3, 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 AD Agreement with regard to the application of anti-dumping measures.

3. Pursuant to Article 5.5 of the AD Agreement, a Party that has received a properly documented application from an industry in its Area for the initiation of an anti-dumping investigation in respect of goods from the other Party shall, as soon as possible but no later than 7 days following receipt, give written notice to the other Party.

Chapter 9. GOVERNMENT PROCUREMENT

Article 9.1. Definitions

For the purposes of this Chapter:

entity means an entity listed in Annex 9.1;

government procurement or 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 for use in the production or supply of goods or services for commercial sale or resale;

government procurement measure means any law, regulation, administrative guidance, practice, or procedure of general application relating to government procurement;

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

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice in accordance with Article 9.13.2;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

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

qualified supplier means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

supplier means a person that provides or could provide goods or services to an entity; and

technical specification means a tendering requirement that:

(a) sets out the characteristics of:

(i) goods to be procured, such as quality, performance, safety and dimensions, or the processes and methods for their production; or

(ii) services to be procured, or the processes and methods for their provision;

(b) addresses terminology, symbols, packaging, marking or labeling requirements, as they apply to a good or service; or

(c) sets out conformity assessment procedures prescribed by an entity.

Article 9.2. Scope

1. This Chapter shall apply to any government procurement measure adopted or maintained by a Party relating to procurement by an entity:

(a) by any contractual means, including purchase, rental or lease, with or without an option to buy;

(b) for which the value, as estimated in accordance with Article 9.3, equals or exceeds the relevant threshold specified in Annex 9.2, at the time of the publication of a notice in accordance with Article 9.8; and

(c) subject to the provisions specified in Annex 9.1.6

2. This Chapter shall not apply to:

(a) the purchase or acquisition of goods and services by an entity of a Party from another entity of that Party, except where tenders are called, in which case this Chapter shall apply;

(b) non-contractual agreements or any form of assistance provided by a Party, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and purchases for the direct purpose of providing foreign

assistance;

(c) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(d) the procurement or acquisition 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 and other securities;

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

(f) procurement conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation of a project where that international agreement applies to a Party.

3. Entities of each Party shall not prepare, design or otherwise structure or divide, at any stage of the procurement, any procurement in order to avoid the obligations of this Chapter.

Article 9.3. Valuation

In calculating the value of a contract for the purpose of ascertaining whether the procurement is covered by this Chapter, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account all forms of remuneration provided for in such contracts, including options, premiums, fees, commissions and interest.

Article 9.4. Exceptions

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent either 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 persons with disabilities, of philanthropic institutions or of prison labour.

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

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

Article 9.5. National Treatment and Non-Discrimination

1. With respect to any government procurement measure regarding procurement covered by this Chapter, each Party shall grant to goods, services and suppliers of the other Party treatment no less favourable than that accorded by it to domestic goods, services and suppliers.

2. With respect to any government procurement measure regarding procurement covered by this Chapter, neither Party shall allow its entities to:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation to, or ownership by a person of, the other Party; or

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

3. A Party, including its entities, shall not consider, seek, or impose, at any stage of a procurement, conditions or measures used to encourage its development or improve the balance-of-payments accounts, such as the licensing of technology,

investment requirements, counter-trade or other similar requirements.

4. Paragraphs 1 and 2 shall not apply to measures concerning customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations, including restrictions and formalities, or measures affecting trade in services other than government procurement measures.

5. For the purposes of paragraphs 1 and 2, each Party shall apply to procurement covered by this Chapter the rules of origin that it applies in the normal course of trade.

Article 9.6. Non-Disclosure of Information

1. The Parties, their entities and review authorities shall not, except to the extent required by law, disclose confidential information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers without the written authorisation of the supplier that provided the information.

2. Nothing in this Chapter shall be construed as requiring either Party, its entities or review authorities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article 9.7. Publication of Information on Procurement

Each Party shall promptly publish its procurement laws, regulations, procedures and administrative guidance of general application relating to procurements covered by this Chapter, and any changes or additions to this information.

Article 9.8. Notice of Intended Procurement

1. For each procurement covered by this Chapter, an entity shall publish in advance a notice of intended procurement inviting interested suppliers to submit tenders for that procurement, except as provided in Article 9.13.2. Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

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 entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders, and the dates for delivery of the goods or services to be procured.

3. Each notice of intended procurement shall be published sufficiently in advance to provide interested suppliers with a reasonable period of time, in light of the nature, circumstances and complexity of the procurement, to obtain the full tender documentation and to prepare and submit responsive tenders by the closing date, or to apply for participation in the procurement where applicable.

4. The Parties agree that entities shall in no case provide less than 10 days between the date on which the notice of intended procurement is published and the final date for the submission of tenders or applications to participate.

Article 9.9. Conditions for Participation

1. Where an entity requires suppliers to register, qualify, or satisfy any other conditions before being permitted to participate in a procurement, each Party shall ensure that a notice is published inviting suppliers to apply for registration or qualification or to demonstrate satisfaction of other conditions for participation.

2. The notice shall be published sufficiently in advance for interested suppliers to prepare and submit responsive applications and for the entity to evaluate and make its determinations based on such applications.

3. Any conditions for participation in the procurement, including the legal, commercial, technical and financial capacity of suppliers, as well as the verification of qualifications, shall be limited to those which are essential to ensure the supplier's capability to fulfil the contract in question.

4. The commercial, technical and financial capacity of a supplier shall be judged on the basis of both that supplier's global business activity and its activity in the Area of the procuring entity, taking due account of the legal relationship between the supply organisations.

5. Entities shall consider for a particular procurement those suppliers of the other Party that request to participate in the procurement and that are not yet registered or qualified, provided there is sufficient time to complete the registration or

qualification procedures within the time period allowed for the submission of tenders.

6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy, liquidation or insolvency, false declarations relating to a procurement, or significant deficiency in the performance of any obligation under a prior contract.

Article 9.10. Lists of Registered or Qualified Suppliers

1. Entities may establish for continuing use a list of suppliers registered or qualified to participate in procurements.

2. Entities shall publish annually or otherwise make available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list.

3. Entities shall ensure that suppliers may apply for participation in the list at any time, and that all qualifying suppliers are included within a reasonable period, taking into account the conditions for participation and the need for verification.

4. Where entities require suppliers to qualify for such a list before being permitted to participate in a procurement, and a supplier that has not previously satisfied such requirements or conditions submits an application, the entity shall promptly start the registration or qualification process. The entity shall allow such supplier to participate in the procurement, provided there is sufficient time to complete the registration or procurement procedures within the time period allowed for the submission of tenders.

Article 9.11. Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. Any technical specifications prescribed by an entity shall, where appropriate:

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

(b) be based on international standards, where applicable, or otherwise on national technical regulations, recognised national standards, or building codes.

3. Each Party shall ensure that its entities do not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier, unless there is no 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. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of prejudicing fair competition, advice to 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.

Article 9.12. Tender Documentation

1. Tender documentation provided to suppliers shall contain all information necessary to enable them to prepare and submit responsive tenders, including the essential requirements and evaluation criteria for the award of the procurement contract.

2. Where entities do not offer direct access to the tender documentation by electronic means, entities shall promptly make available the tender documentation at the request of any interested or, as applicable, qualified supplier.

3. Where an entity modifies the tender documentation, and that modification could impact on the preparation of tenders, it shall publish or transmit all such modifications in writing:

(a) to all suppliers who have requested tender documentation at the time the criteria are modified, and in the same manner as the original information was transmitted by the entity; and

(b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

Article 9.13. Tendering Procedures

1. Except as provided for in paragraph 2, entities shall award contracts by means of open or selective tendering procedures,

in the course of which all interested suppliers or, in the case of selective tendering, suppliers invited to do so by an entity may submit a tender.

2. Provided that it does not use this provision for the purpose of avoiding competition among suppliers, or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering procedures only under any of the following circumstances:

(a) where, in response to a prior notice, invitation to participate, or invitation to tender under open or selective tendering procedures:

(i) no tenders were submitted;

(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

provided that the essential requirements of the procurement as set out in the tender documentation have not been substantially modified;

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

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

(d) for goods purchased on a commodity market;

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

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

(g) in so far as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity and beyond its control, the goods or services could not be obtained in time by means of an open or selective tendering procedure;

(h) for purchases made under exceptionally advantageous conditions that only arise in the very short term, including public auction or unusual disposals, such as those resulting from liquidation, bankruptcy or receivership. This subparagraph is not intended to cover routine purchases from regular suppliers; and

(i) in the case of a contract awarded to the winner of a design contest provided that the contest has been organised in a manner which is consistent with the principles of this Chapter and that the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

3. An 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 in paragraph 2.

Article 9.14. Treatment of Tenders and Awarding of Contracts

1. An entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. To be considered for award of a contract, a tender must, at the time of opening by the entity, conform to the essential requirements of the notice of intended procurement or tender documentation and be submitted by a supplier who complies with the conditions for participation.

3. Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the

supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation, or where price is the sole criterion, the lowest price.

4. No entity may cancel a procurement, or terminate or modify awarded contracts, in order to avoid the obligations of this Chapter.

Article 9.15. Post-Award Information

1. Entities shall promptly inform suppliers that have submitted a tender of the contract award decision.

2. Entities shall, at the request of an unsuccessful supplier, promptly explain the reasons for the rejection of its tender or the relative advantages of the tender the entity selected.

3. Entities shall, promptly after the award of a contract for a procurement covered by this Chapter, publish a notice containing at least the following information:

(a) the name and address of the successful supplier;

(b) a description of the goods or services supplied; and

(c) the value of the contract award.

Article 9.16. 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 address any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 9.17. Domestic Review of Supplier Complaints

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of government procurement measures implementing this Chapter arising in the context of a procurement in which they have, or have had, an interest. Where appropriate, a Party may encourage suppliers to seek clarification from its entities with a view to facilitating the resolution of any such complaints.

2. Each Party shall provide suppliers of the other Party with non- discriminatory, timely, transparent and effective access to an administrative or judicial body competent to hear or review complaints of alleged breaches of the procuring Party's government procurement measures implementing this Chapter arising in the context of procurements in which those suppliers have, or have had, an interest.

3. Each Party shall make information on complaint mechanisms generally available.

4. Where an administrative or judicial body may award compensation for any breach of government procurement measures implementing this Chapter, such compensation may be limited to the costs for tender preparation reasonably incurred by the supplier for the purpose of the procurement, or the costs relating to the complaint, or both.

Article 9.18. Encouraging Use of Electronic Communications In Procurement

1. The Parties shall encourage their entities to provide opportunities for government procurement to be undertaken through electronic means.

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 Area and on procurement laws, regulations, procedures and administrative guidance of general application published in accordance with Article 9.7.

3. The Parties shall encourage, to the extent possible, the use of electronic means for the provision of tender documents and receipt of tenders.

Article 9.19. Modifications and Rectifications of Annex 9.1

1. Either Party may modify its Section under Annex 9.1 provided that it:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and

(b) offers within 30 days of the notification 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.

2. Either Party may make rectifications to its Section under Annex 9.1 in respect of:

(a) a change in the name of an entity listed in Annex 9.1;

(b) merger of two or more entities listed within Annex 9.1; and

(c) the separation of an entity listed in Annex 9.1 into two or more entities that are all added to Annex 9.1,

provided that it notifies the other Party in writing every 2 years, commencing with the entry into force of this Agreement, and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification shall not be required to provide compensatory adjustments.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification to Annex 9.1 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 the Parties are in agreement on the proposed modification, rectification or minor amendment, including where a Party has not objected within 30 days under paragraph 1 or 2, the Commission shall give effect to the agreement by modifying forthwith the relevant Section under Annex 9.1.

Article 9.20. Committee on Procurement

1. The Parties hereby establish a Committee on Procurement, comprising representatives of each Party.

2. The Committee on Procurement may explore opportunities for further cooperation, collaboration and information exchange on matters relating to this Chapter. Such cooperation, collaboration or information exchange may be carried out in person or via teleconference, videoconference or any other means determined by the Committee. The Committee may also address issues through correspondence, including via electronic communication.

Article 9.21. Review

At the request of either Party, the Parties shall review the coverage under this Chapter with the aim of improving their suppliers' access to each other's government procurement market on a reciprocal basis.

Chapter 10. Establishment

Article 10.1. Definitions

For the purposes of this Chapter: establishment means:

(a) The constitution, acquisition or maintenance of a juridical person; or

(b) The creation or maintenance of a branch or a representative office, within the Area of a Party for the purpose of performing an economic activity; and juridical person of the other Party means a juridical person constituted or otherwise organised under the domestic laws and regulations of that Party and engaged in substantive business operations in either Party.

Article 10.2. Scope

This Chapter shall apply to establishment in all sectors with the exception of sectors covered by Chapter 11 (Trade in Services).(7)(8)

(7) For greater certainty, services and obligations specifically excluded from the scope of Chapter 11 (Trade in Services) do not fall under the

scope of this Chapter.

(8) For greater certainty, nothing in this Chapter shall be construed to impose any obligation in relation to measures in respect of: (a) expropriation; (b) full protection and security; (c) compensation for losses owing to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or riot; or (d) subrogation. Notwithstanding this, the foregoing does not preclude the domestic laws and regulations of either Party from providing measures in respect of any of these matters.

Article 10.3. National Treatment

In the sectors inscribed in Annex 10.3, and subject to any conditions and qualifications set out therein, with respect to establishment, each Party shall grant to juridical and natural persons of the other Party treatment no less favourable than that it accords, in like circumstances, to its own juridical and natural persons.

Article 10.4. Right to Regulate

Subject to Article 10.3, each Party may regulate, with respect to establishment, juridical and natural persons.

(7) For greater certainty, services and obligations specifically excluded from the scope of Chapter 11 (Trade in Services) do not fall under the scope of this Chapter.

(8) For greater certainty, nothing in this Chapter shall be construed to impose any obligation in relation to measures in respect of:
(a) expropriation;
(b) full protection and security;
(c) compensation for losses owing to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or riot; or
(d) subrogation. Notwithstanding this, the foregoing does not preclude the domestic laws and regulations of either Party from providing measures in respect of any of these matters.

Chapter 11. Trade In Services

Article 11.1. Definitions

For the purposes of this Chapter:

A 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;

Aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

Commercial presence means any type of business or professional establishment, including through:

(a) The constitution, acquisition or maintenance of a juridical person; or

(b) the creation or maintenance of a branch or a representative office, within the Area of a Party for the purpose of supplying a service;

Computer reservation system (CRS) 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;

Measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

Measures adopted or maintained by a Party means measures adopted or maintained by:

(a) Central, regional, or local governments and authorities; and

(b) Non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities; person means a natural or a juridical person;

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

Service supplier means any person that seeks to supply or supplies a service;

Services includes any service in any sector except services supplied in the exercise of governmental authority; and

Trade in services means the supply of a service:

(a) from the Area of a Party into the Area of the other Party (Crossborder supply: Mode 1);

(b) In the Area of a Party by a service supplier of that Party to a person of the other Party (Consumption abroad: Mode 2);

(c) By a service supplier of a Party, through commercial presence in the Area of the other Party (Commercial presence: Mode 3); and

(d) By a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party (Presence of natural persons: Mode 4).

Article 11.2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by a service supplier of the other Party, including those related to:
(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, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; and
(d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:
(a) financial service as defined in Article 12.1; and
(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services, other than:
(i) aircraft repair and maintenance services;
(ii) the selling and marketing of air transport services; and
(iii) computer reservation system (CRS) services.

3. Nothing in this Chapter shall be construed to impose any obligation with respect to:

(a) Government procurement;

(b) Subsidies, including grants, provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 11.9;

(c) Measures affecting natural persons seeking access to the employment market of a Party; or (d) measures regarding citizenship, nationality, residence or employment on a permanent basis.

4. For greater certainty, this Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its Area, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons 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 as set out (9) in the Schedule to Annex 11.6 of the Party applying the measures.

(9) The sole fact of requiring a visa for natural persons of the other Party and not for those of a non-Party shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of a specific commitment.

Article 11.3. National Treatment

1. In the sectors inscribed in its Schedule to Annex 11.6, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of

services, treatment no less favourable than that it accords to its own like (10) services and service suppliers.

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

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

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

Article 11.4. Market Access

1. With respect to market access through the modes of supply identified in Article 11.1, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule to Annex 11.6.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt, unless otherwise specified in its Schedule to Annex 11.6, are defined as:

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

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

(c) Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (11)

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

(e) Measures which restrict or require specific types of legal entities or joint ventures through which a service supplier may supply a service; and

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

(11) Paragraph 2 (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 11.5. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 11.3 or 11.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule to Annex 11.6.

Article 11.6. Schedule of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 11.3 and 11.4 are set out in its Schedule to Annex 11.6. With respect to sectors where such commitments are undertaken, each Schedule specifies:

(a) Terms, limitations and conditions on market access;

(b) Conditions and qualifications on national treatment;

(c) Undertakings relating to additional commitments; and (d) where appropriate, the time-frame for implementation of such commitments and the date of their entry into force.

2. Measures inconsistent with both Articles 11.3 and 11.4 are inscribed in the column relating to Article 11.4. In this case, the

inscription will be considered to provide a condition or qualification to Article 11.3 as well.

Article 11.6. Domestic Regulation

1. In sectors where specific commitments are undertaken, 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 maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of and, where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. 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.

4. 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 licenses 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) At the request of the applicant, provide without undue delay, information concerning the status of the application; and

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

(c) Provide for adequate procedures to verify the competency of professionals of the other Party.

5. Notwithstanding subparagraph (b) of the definition of measures adopted or maintained by a Party in Article 11.1, paragraphs 1, 3 and 4 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, 3 and 4. 6. If the results of the negotiations related to Article VI.4 of GATSenter 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 11.8. 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 4, a Party may recognise the education or experience obtained, requirements met, or licenses or certification granted in the Area of the other Party.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the Area of a non-Party, nothing in this Chapter shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the Area of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education or experience obtained, requirements met, or

licenses or certifications granted in that other Party's Area should be recognised.

4. 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 11.9. Subsidies

Notwithstanding paragraph 3 (b) of Article 11.2, the Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS, with a view to the incorporation of such disciplines into this Agreement.

Article 11.10. Review

Three years after the entry into force of this Agreement and in pursuit of the objectives and purposes of this Chapter, the Commission may review this Chapter, taking into account the developments and regulations on trade in services of the Parties as well as the progress made at the WTO and other specialised forums.

Article 11.11. Denial of Benefits

Subject to prior notification and consultations, a Party may deny the benefits of this Chapter to:

(a) Service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantive business operations in the Area of the other Party; or

(b) Service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business operations in the Area of the other Party.

Chapter 12. Financial Services

Article 12.1. Definitions

For the purposes of this Chapter:

Commercial presence means any type of business or professional establishment, including through:

(a) The constitution, acquisition or maintenance of a juridical person; or

(b) The creation or maintenance of a branch or a representative office,

Within the Area of a Party for the purpose of supplying a financial service;

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

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) Life

(ii) Non-life

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency;

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

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;

(f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(i) Money market instruments, including cheques, bills, certificates of deposits;

(ii) Foreign exchange;

(iii) Derivative products including, but not limited to, futures and options;

(iv) Exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) Transferable securities;

(vi) Other negotiable instruments and financial assets, including bullion;

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

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

Financial service supplier means any person that seeks to supply or supplies financial services but the term "financial service supplier" does not include a public entity;

Juridical person of a Party means a juridical person constituted or otherwise organised under the laws of Hong Kong, China or Chile. Should such a juridical person have only its registered office in the Area of Hong Kong, China or Chile, it shall not be considered as a Hong Kong, China or a Chilean juridical person respectively, unless it is engaged in substantive business operations in the Area of Hong Kong, China or Chile, respectively;

Measure has the same meaning as in Article 11.1;

Measures adopted or maintained by a Party has the same meaning as in Article 11.1;

Person has the same meaning as in Article 11.1; and

Public entity means:

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

(b) A private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Article 12.2. Scope

1. This Chapter shall apply to measures adopted or maintained by the Parties affecting trade in financial services.

2. For the purposes of this Chapter, trade in financial services is defined as the supply of a financial service through the following modes:

(a) From the Area of a Party into the Area of the other Party (Crossborder supply: Mode 1);

(b) In the Area of a Party to the financial service consumer of the other Party (Consumption abroad: Mode 2);

(c) By a financial service supplier of a Party, through commercial presence in the Area of the other Party (Commercial presence: Mode 3); and

(d) By a financial service supplier of a Party, through presence of natural persons in the Area of the other Party (Presence of natural persons: Mode 4).

3. Nothing in this Chapter shall be construed to impose any obligation with respect to:

(a) Government procurement;

(b) Subsidies, including grants, provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers;

(c) Measures affecting natural persons seeking access to the employment market of a Party; and

(d) Measures regarding citizenship, nationality, residence or employment on a permanent basis.

4. This Chapter shall not apply to:

(a) Activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) Activities forming part of a statutory system of social security or public retirement plans; and

(c) Other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

5. For greater certainty, this Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its Area, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons 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 as set out in its Schedule to Annex 12.5. (22)

(22) The sole fact of requiring a visa for natural persons of the other Party and not for those of a non-Party shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of a specific commitment.

Article 12.3. Market Access

1. With respect to market access through the modes of supply identified in Article 12.2, each Party shall accord financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule to Annex 12.5. 2.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt, unless otherwise specified in its Schedule to Annex 12.5, are defined as:

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

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

(c) Limitations on the total number of financial service operations or on the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (23)

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

(e) Measures which restrict or require specific types of legal entities or joint ventures through which a financial service supplier may supply a financial service; and

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

(23) Paragraph 2 (c) does not cover measures of a Party which limit inputs for the supply of financial services.

Article 12.4. National Treatment

1. In the sectors inscribed in its Schedule to Annex 12.5 and subject to any conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers. (24)

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

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

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

Article 12.5. Schedule of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 12.3 and 12.4 are set out in its Schedule to Annex 12.5. With respect to sectors where such commitments are undertaken, each Schedule specifies:
(a) terms, limitations and conditions on market access; and
(b) conditions and qualifications on national treatment.

2. Measures inconsistent with both Articles 12.3 and 12.4 are inscribed in the column relating to Article 12.3. In this case, the inscription will be considered to provide a condition or qualification to Article 12.4 as well.

Article 12.6. Data Processing In the Financial Services Sector

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

2. Where the information referred to in paragraph 1 consists of or contains personal data, the transfer of such information from the Area of one Party to the Area of the other Party shall take place in accordance with the domestic laws and regulations regulating the protection of individuals with respect to the transferring and processing of personal data of the Party out of whose Area the information is transferred.

Article 12.7. Effective and Transparent Regulation In the Financial Services Sector

1. Each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application affecting financial services that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) By means of an official publication; or

(b) In other written or electronic form.

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

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

4. Each Party shall make its best endeavours to implement and apply in its Area internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering. For this purpose, the Parties shall cooperate and exchange information and experience within the Committee on Financial Services referred to in Article 12.11.

Article 12.8. Confidential Information

Nothing in this Chapter:

(a) Shall be construed as requiring a Party to furnish or allow access to information the disclosure of which would impede law enforcement or violate its domestic laws and regulations or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private, or at the time of the disclosure of the information, would be for the purpose of judicial proceedings of the other Party; and

(b) Shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers of financial service suppliers, or any confidential or proprietary information in the possession of public entities.

Article 12.9. Prudential Carve Out

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

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

(b) The maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; and
(c) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 12.10. Recognition

1. A Party may recognise prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement with a third party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 12.11. Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services, comprising representatives of each Party. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.11.

2. The functions of the Committee shall include supervising the implementation of this Chapter and considering issues regarding financial services that are referred to it by a Party.

3. The Committee shall meet at the request of a Party on a date and with an agenda agreed in advance by the Parties. The

office of chairperson of the Committee shall be held alternately by each Party. The Committee shall report to the Commission the results of its meetings.

Article 12.12. Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. The requesting Party shall deliver a written 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. The other Party shall give sympathetic consideration to the request and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory resolution, within a period of no more than 15 days after the date of receipt of the request. The Parties shall report the results of their consultations to the Committee on Financial Services.

2. Consultations under this Article shall include officials of the authorities of both Parties set out in Annex 12.11.

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

4. Where a financial authority of a Party requires information for supervisory purposes concerning a financial service supplier in the Area of the other Party, such financial authority may approach the competent financial authority in the Area of the other Party to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the other Party's relevant laws and regulations or to the requirement of a prior agreement or arrangement between the respective financial authorities.

Article 12.13. Specific Provisions on Dispute Settlement

1. Except as otherwise provided in this Article, any disputes arising under this Chapter shall be settled in accordance with Chapter 17 (Dispute Settlement).

2. For the purposes of Article 17.5.1, consultations held under Article 12.12 shall be deemed to constitute the consultations under Article 17.3, unless the Parties otherwise agree. Upon initiation of consultations under Article 12.12, the Parties shall provide information to enable the examination of how a measure of a Party or any other matter may affect the operation and application of this Chapter, and give confidential treatment to the information exchanged during consultations. If the matter has not been resolved within 45 days after holding the consultations under Article 12.12 or 90 days after the delivery of the request for consultations under Article 12.12.1, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations directly to the Commission.

3. For the purposes of Article 17.7, panelists of the arbitral panel constituted for disputes arising under this Chapter shall meet the requirements set out in Article 17.7 and shall also have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. Consistent with Article 17.12, in any dispute where an arbitral panel finds a measure to be inconsistent with the obligations of this Agreement or finds other nullification or impairment and the measure or nullification or impairment affects:
(a) only the financial services sector, the complaining Party may suspend concessions or other obligations only in the financial services sector;
(b) the financial services sector and any other sector, the complaining Party may suspend its concessions or other obligations in the financial services sector that have an effect equivalent to the effect of the measure in the financial services sector; or
(c) only a sector other than the financial services sector, the complaining Party shall not suspend concessions or other obligations in the financial services sector.

Chapter 13. Competition

Article 13.1. Objective

1. 1. The Parties recognise the strategic importance of promoting open and competitive markets through the effective application of competition policies for the purposes of enhancing trade and investment, economic efficiency and consumer welfare.

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 anti-competitive activities.

Article 13.2. Promotion of Competition

1. The Parties agree to promote competition and endeavour to ensure that the design of trade and competition policies and the implementation of domestic laws and regulations give due recognition to the effects on competition by:

(a) Providing transparency in policies, laws and regulations, and their implementation;

(b) Maintaining a high-level government commitment to promote competition and enhance economic efficiency;

(c) Promoting coherent and effective implementation of trade and competition policies within their respective Areas; and

(d) Fostering appropriate cooperation between trade and competition officials.

2. The Parties recognise that the implementation of paragraph 1 may be subject to the different circumstances of the Parties and the different policy approaches that arise from these circumstances.

Article 13.3. Promotion of Competition

1. The Parties agree to cooperate and coordinate in the area of competition policy by exchanging information on the development of competition policy.

2. Where the Parties have set up their respective regulatory authorities responsible for competition law, the Parties shall encourage their respective regulatory authorities to cooperate in the area of competition law, including through technical assistance as appropriate, consultation, notification and exchanges of information, as permitted by the domestic laws and regulations and overall policy of each Party and within the scope of the responsibilities of each regulatory authority.

Article 13.4. Consultations

1. At the request of either Party, the Parties shall consult on particular anti-competitive practices adversely affecting trade or investment between the Parties, consistent with the objectives of this Chapter.

2. In the event that consultations in accordance with paragraph 1 do not lead to any satisfactory result, the affected Party may request consultations in the Commission. The Parties involved shall provide the necessary assistance to the Commission to examine the case.

Article 13.5. Review

The Parties agree to review this Chapter in the Commission with a view to elaborating further steps in light of future developments. The first review shall take place within 3 years after the entry into force of this Agreement.

Chapter 14. Environment

Article 14.1. Objectives

The objectives of this Chapter are to:

(a) Encourage sound environmental policies and practices and improve the capacities and capabilities of the Parties to address environmental matters;

(b) Promote, through a collaborative approach, the commitments made by the Parties in this Chapter; and

(c) Facilitate dialogue and interaction in a collaborative manner in order to strengthen the broader relationship between the Parties.

Article 14.2. Key Commitments

1. The Parties affirm through this Chapter their intention to continue to pursue a high level of environmental protection and to fulfil their respective multilateral environmental commitments and international plans of action in such a way as to contribute to the objective of sustainable development.

2. Each Party shall endeavour to have its environmental laws, regulations, policies and practices in harmony with its international environmental commitments.

3. Each Party shall respect the right of the other Party to set, administer and enforce its own environmental laws, regulations, policies and practices according to its priorities.

4. The Parties agree that it is inappropriate to set or use their environmental laws, regulations, policies and practices for trade protectionist purposes.

5. The Parties agree that it is inappropriate to relax, or not to enforce or administer, their environment laws and regulations so as to encourage trade and investment.

6. Each Party shall promote public awareness of its environmental laws, regulations, policies and practices domestically.

Article 14.3. Collaborative Framework

1. The Parties agree to establish a collaborative framework as a means to provide enhanced opportunities to advance the common commitments on environmental protection under the framework of this Chapter, by taking account of their respective priorities and available resources.

2. To implement this framework, the Parties should encourage the establishment and development of direct contacts, including stakeholders as appropriate, in the field of environmental protection.

3. Collaborative activities undertaken in this framework may be implemented through a variety of ways, such as the exchange of best practices and information, visits, workshops and dialogue. The funding of collaborative activities shall be decided by the Parties on a case-by-case basis.

4. The Parties will strive to strengthen their collaboration on trade and environment in appropriate international fora in which they participate.

Article 14.4. Institutional Arrangements

1. In order to facilitate communication between the Parties for the purposes of this Chapter, each Party will designate a contact point no later than 6 months after the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of the contact point.

2. The Parties may exchange information by any means of communication, including internet and videoconference.

3. The contact points will report to the Commission about the implementation of this Chapter, if necessary.

4. The Parties may agree to meet in order to discuss matters of mutual interest, including areas of potential collaborative activities, reviewing the implementation of this Chapter and addressing any issue that may arise between the Parties.

Article 14.5. Consultations

1. The Parties shall endeavor, at all times, to make every effort to settle in good faith any issue concerning the interpretation, implementation or application of this Chapter through dialogue, collaboration and consultation.

2. A Party may request consultations with the other Party through its contact point regarding any issue concerning the interpretation, implementation or application of Article 14.2. The contact point shall identify the office or official responsible for the issue and assist if necessary in facilitating communication between the Parties.

3. The Parties shall complete the consultations as soon as practicable, following the receipt by the requested Party of the request for consultations pursuant to paragraph 2.

4. If the consultations under paragraph 3 fail to resolve the issue within 6 months following the receipt by the requested Party of the request for consultations, either Party may refer the issue to the Commission for further consideration.

Chapter 15. Transparency

Article 15.1. Definitions

For the purposes of this Chapter:

Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) A determination or ruling made in administrative proceedings 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 15.2. Contact Points

1. The contact points referred to in Annex 15.2 shall facilitate communications between the Parties on any matter covered by this Agreement.

2. At the request of the other Party, the contact point of a Party shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 15.3. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available (33) to interested persons and the other Party.

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 with a reasonable opportunity to comment on such proposed measures.

(33) Including through the internet or in print form.

Article 15.4. 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. At the 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, response or information under this Article shall be provided to the other Party through the relevant contact points.

4. The notification referred to in paragraph 1 shall be regarded as having been provided in accordance with paragraph 3 when the actual or proposed measure has been notified to the WTO in accordance with the WTO Agreementand copied to the contact point of the other Party.

5. Any notification, response or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 15.5. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner its measures referred to in Article 15.3, 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, 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 laws and regulations.

Article 15.6. Review and Appeal

1. Each Party shall, where warranted, establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and 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 laws and regulations, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic laws and regulations, 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.

Chapter 16. Financial Services

Article 16.1. Free Trade Commission

1. The Parties hereby establish a Free Trade Commission.

2. The Commission shall be comprised of government officials of each Party and shall be co-chaired by senior government officials of the Parties.

3. The Commission 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 and coordinate the work of committees, working groups and contact points established under this Agreement; and

(d) Take such other action as the Parties may agree.

4. The Commission may:

(a) Establish, refer matters and delegate responsibilities to any committee or working group;

(b) Consider and adopt any amendment to this Agreement on:

(i) The Tariff Schedules in Annex 3.4, to accelerate tariff elimination;

(ii) The Product Specific Rules of Origin in Annex 4.2;

(iii) The Annexes to Chapter 7 (Technical Barriers to Trade); and

(iv) The entities listed in Annex 9.1, 218 subject to completion of necessary domestic legal procedures by each Party; (34)

(c) Seek to resolve disputes that may arise regarding the interpretation, implementation or application of this Agreement, without prejudice to the dispute settlement mechanism in accordance with Chapter 17 (Dispute Settlement);

(d) Issue interpretations of this Agreement; and

(e) Seek the advice of non-governmental persons or groups on matters covered by this Agreement.

(34) Chile shall implement any amendment adopted by the Commission pursuant to paragraph 4(b) through executive agreements in accordance with Article 54, number 1, paragraph 4 of the Constitución Política de la República de Chile.

Article 16.2. Procedures of the Commission

1. The Commission shall meet within the first year of entry into force of this Agreement and thereafter at such interval as the Parties may agree. The Commission shall meet alternately in the Area of each Party, unless the Parties otherwise agree.

2. The Commission shall also meet in special session within 30 days from the date of receipt of the request of a Party or as otherwise mutually determined by the Parties, with such sessions to be held in the Area of the other Party or at such location as may be agreed by the Parties.

3. All decisions of the Commission shall be taken by mutual agreement.

4. The Commission shall establish its rules and procedures.

Chapter 17. Dispute Settlement

Article 17.1. Scope

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 or application 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 this Agreement is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. For the avoidance of doubt, the Parties agree that this Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law and consistently with the Preamble of this Agreement.

3. Should any matter arise regarding the implementation, interpretation or application of Chapter 14 (Environment), it will be resolved through the procedures provided in Article 14.5. 4. Neither Party may have recourse to procedures provided under this Chapter for any matter arising under Chapter 13 (Competition).

Article 17.2. 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 the establishment of a panel under an agreement referred to in paragraph 1, the dispute settlement procedure selected shall be used to the exclusion of the others.

3. Except as provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are party.

Article 17.3. Consultations

1. Either Party may request in writing consultations with the other Party concerning any matter on the implementation, interpretation or application of this Agreement.

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 Party to which the request is made shall enter into consultations in good faith, with a view to reaching a mutually satisfactory resolution, within a period of no more than:

(a) 15 days after the date of receipt of the request for urgent matters, including those concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

4. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations under this Article. In conducting the consultations, the Parties shall treat any information exchanged in the course of consultations which is designated by a Party as confidential in nature on the same basis as the Party providing the information.

5. 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.

6. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 17.4. Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 17.5. Establishment of Arbitral Panels

1. The complaining Party that requested consultations under Article 17.3 may request in writing the establishment of an arbitral panel if:

(a) The responding Party does not enter into consultations within the time-frames specified in Article 17.3.3 (a) or (b), or a period otherwise mutually agreed by the Parties; or

(b) The consultations fail to settle a dispute within 30 days after the date of receipt of the request for consultations under Article 17.3.2 in cases of urgency, including those which concern perishable goods, or 60 days after the date of such receipt regarding all other matters.

2. 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 or whether there is a claim pursuant to Article 17.1 (c), and any other relevant provisions; and

(c) The factual basis for the complaint.

3. The arbitral panel shall be established and perform its functions in a manner consistent with this Chapter. 4. The date of the establishment of an arbitral panel shall be the date on which the chair is appointed.

Article 17.6. Terms of Reference of Arbitral Panels

Unless the Parties agree otherwise 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 17.5, to make findings of law and fact, procedural rulings and determinations on whether the measure is not in conformity with this Agreement or is causing nullification or impairment in the sense of Article 17.1 (c) together with the reasons therefore, and to issue a written report for the resolution of the dispute. The arbitral panel may make recommendations for resolution of the dispute."

Article 17.7. Composition of Arbitral Panels

1. An arbitral panel shall comprise 3 panelists.

2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral panel, appoint 1 panelist who may be a natural person of such Party and propose up to 3 candidates to serve as the third panelist who

shall be the chair of the arbitral panel. The third panelist shall be a national of a non-Party and shall not 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 7 days by lot from the candidates proposed pursuant to paragraph 2 and be appointed accordingly.

5. All panelists shall:

(a) Have expertise or experience in law, international trade or other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) Be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) Be independent of, and not be affiliated with or 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 17.13. 6. If a panelist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within 21 days from the date both Parties have received written notice of the vacancy or from the date both Parties become aware of the vacancy, whichever is the earlier, 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 17.8. Proceedings of Arbitral Panels

1. The arbitral panel shall meet in closed session, unless the Parties decide otherwise. If the Parties decide that the panel meeting is open to the public, part of the meeting may however be held in closed session, if the arbitral panel, on application by either Party, so decides for good reasons. In particular, the arbitral panel shall meet in closed session when the submissions and arguments of a Party contain business confidential information.

2. The Parties shall be given the opportunity to provide at least 1 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 shall 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 after such notification, 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. Where the arbitral panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice

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. Unless the Parties agree otherwise, each Party shall bear the cost of its appointed panelist and its own expenses. The cost of the chair of an arbitral panel shall be borne by the Parties in equal shares. Other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares unless the arbitral panel decides otherwise.

Article 17.9. Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral panel suspends 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 17.10 and paragraph 7 of Article 17.12 shall be extended by the amount of time that the work of the arbitral panel 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 notifying the chair of the arbitral panel at any time before the issuance of the report to the Parties.

Article 17.10. 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 information provided to the arbitral panel pursuant to paragraph 5 of Article 17.8.

2. Unless the Parties agree otherwise, the arbitral panel shall, within 120 days after the date of its establishment, or within 60 days after the date of its establishment in cases of urgency, including those which concern perishable goods, 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, procedural rulings and determinations of the arbitral panel. The arbitral panel may make recommendations for resolution of the dispute in its report. The findings, procedural rulings 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 120-day or 60-day period referred to in paragraph 2, 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 to the Parties.

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 to the Parties. 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 made available to the public within 15 days after the date of its issuance, subject to the requirement to protect confidential information.

9. The report of the arbitral panel, other than any recommendations made, shall be final and binding on the Parties.

Article 17.11. Implementation of the Report

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity with this Agreement or the nullification or impairment in the sense of Article 17.1 (c) as determined in the final 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. The reasonable period of time should not exceed 12 months from the date of the issuance of the arbitral panel's final report to the Parties unless the Parties agree otherwise. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the final report of the arbitral panel referred to in Article 17.10, either Party may refer the matter to an arbitral panel as provided for in Article 17.12.7, 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 17.1 (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 17.12.7.

Article 17.12. 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 17.11.4 confirms that the Party complained against has failed, to eliminate the non-conformity with this Agreement or the nullification or impairment in the sense of Article 17.1 (c) as determined in the final report of 227 the arbitral panel within the reasonable period of time as determined pursuant to Article 17.11.3, 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 after the 20-day period has lapsed. Concessions or other obligations under this Agreement shall not be suspended while the complaining Party is pursuing negotiations under 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 with this Agreement or the nullification or impairment in the sense of Article 17.1 (c) as determined in the final report of the arbitral panel. The suspension shall only be applied until such time as the non-conformity with this Agreement or the nullification or impairment in the sense of Article 17.1 (c) is fully eliminated, or a mutually satisfactory resolution 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 final report of the arbitral panel referred to in Article 17.10 has found the non-conformity with this Agreement or the nullification or impairment of benefits in the sense of Article 17.1 (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 228 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 17.11 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 17.11 shall be appointed pursuant to Article 17.7. The arbitral panel established for the purposes of this Article or Article 17.11 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 made 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. If the arbitral panel finds that the responding Party has complied with the findings and rulings, the complaining Party shall promptly stop the suspension of benefits under Article 17.12.

Article 17.13. Rules of Procedure

The Commission 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 agree otherwise, the arbitral panel shall follow the Rules of Procedure adopted by the Commission and may, after consulting the Parties, adopt additional Rules of Procedure not inconsistent with the rules adopted by the Commission.

Article 17.14. 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 17.13, 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 18. Exceptions

Article 18.1. General Exceptions

1. For the purposes of Chapters 3 to 8 (Trade in Goods, Rules of Origin, Customs Procedures and Cooperation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade and Trade Remedies), Article XX of GATT1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT1994applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters 10 to 12 (Establishment, Trade in Services and Financial Services), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV (b) of GATS 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 Commission to the fullest extent possible of measures taken and of their termination.

Article 18.2. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) To require a Party to furnish or allow access to any information the disclosure of which it 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 external relations; or

(c) To prevent a Party from taking any action in pursuance of the obligations applicable to it 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 promptly inform the other Party to the fullest extent possible of measures taken and of their termination.

Article 18.3. Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention or other arrangement on taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention or other arrangement on taxation, the latter shall prevail to the extent of the inconsistency.

3. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall be referred to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention or arrangement prevails. If within 6 months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention or arrangement prevails, no procedures concerning that measure may be initiated under Chapter 17 (Dispute Settlement). Neither may such procedures be initiated during the period the issue is under consideration by the designated authorities.

4. Article 3.3 shall apply to taxation measures to the same extent as Article III of GATT1994.

5. Articles 10.3 and 11.3 and 12.4 shall apply to taxation measures to the same extent as covered by the GATS.

6. For the purposes of this Article, taxation measure means any measure relating to direct or indirect taxes, but does not include: (a) a customs duty; or (b) the measures listed in subparagraphs (b) and (c) of the definition of customs duties in Article 2.1.

7. For the purposes of paragraph 3, designated authority means:

(a) In the case of Hong Kong, China, to be designated by the Director-General of Trade and Industry or his authorised representative; and

(b) In the case of Chile, the Director del Servicio de Impuestos Internos, Ministerio de Hacienda, or an authorised representative of the Ministro de Hacienda.

Article 184. Measures 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, trade in services, and establishment under Chapter 10 in accordance with:

(a) GATT 1994 and the WTO Understanding on the Balance-of-PaymentsProvisions of the GeneralAgreement onTariffs and Trade1994; or

(b) Article XII.2 of GATS, including on payments, transfers or capital movements, as applicable.

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.

4. In determining the incidence of restrictions adopted or maintained under paragraph 1, each Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall promptly be notified to the other Party and present, as soon as possible, a time schedule for their removal.

6. The Party adopting or maintaining any restrictions under paragraph 1 shall consult promptly with the other Party. 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 185. 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. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific written permission of the Party providing the information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

2. Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to information the disclosure of which would impede law enforcement or violate its domestic law or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private, or at the time of the disclosure of the information, would be for the purpose of judicial proceedings of the other Party.

Chapter 19. Final Provisions

Article 191. Annexes and Footnotes

The Annexes and footnotes to this Agreement constitute an integral part of this Agreement.

Article 192. Amendments

1. This Agreement may be amended by the Parties by agreement in writing or by the Commission pursuant to Article 16.1.4(b).

2. All amendments to this Agreement shall enter into force 60 days after the date of the last notification by which the Parties inform each other that the necessary domestic legal procedures have been completed, or on such other date as may be agreed by the Parties.

3. All amendments shall, upon entry into force, constitute an integral part of this Agreement.

Article 193. Amendment of the Wto Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties may consult each other on whether to amend this Agreement.

Article 194. Succession of Treaties or International Agreements

Subject to Article 19.3, any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which a Party is party or which is applicable to the Area of a Party.

Article 195. Memorandum of Understanding on Labour Cooperation

The Parties shall enhance their dialogue and cooperation on labour matters through the Memorandum ofUnderstanding onLabourCooperation between Hong Kong, China and Chile concluded by the Parties separately from but alongside this Agreement.

Article 196. Future Work Programmes

1. Upon the entry into force of this Agreement, the Parties will initiate negotiations on investment in accordance with the terms of reference established by the Notes exchanged between them alongside this Agreement.

2. The Parties shall review, 2 years after the entry into force of this Agreement and at the request of either Party, their taxation measures with the purpose of improving the disciplines contained in Article 18.3.

Article 197. Entry Into Force and Termination

1. The entry into force of this Agreement is subject to the completion of the necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force 60 days after the date of the last notification by which the Parties inform each other that the procedures under paragraph 1 have been completed, or on such other date as may be agreed by the Parties.

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.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Vladivostok, Russian Federation, in duplicate, this September 7th 2012, in the English language.

For the Government of the Hong Kong Special Administrative Region of the People's Republic of China.

For the Government of the Republic of Chile

MEMORANDUM OF UNDERSTANDING ON LABOUR COOPERATION BETWEEN HONG KONG, CHINA AND CHILE

The Governments of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong, China") and Republic of Chile ("Chile"), hereinafter individually referred to as a "Party" or collectively as the "Parties":

Desiring to express an approach dealing with labour issues based on dialogue, cooperation and consultation, taking into account the needs, aspirations and unique circumstances of each Party;

Seeking to improve working conditions and protect and enhance the basic workers' rights in the areas of the Parties, taking into account the different domestic contexts, including development, social, cultural and historical backgrounds;

Acknowledging that the Parties share a similar commitment to improving the levels of labour protection through their domestic laws and regulations, policies and practices, taking into account their domestic context and priorities;

Considering the strategic labour objectives of the International Labour Organization ("ILO"), including those related to employment, labour standards, social protection and social dialogue, which the Parties firmly support; and

Considering the Free Trade Agreement between Hong Kong, China and Chile, done at Vladivostok, Russian Federation, on September 7th , 2012 ("FTA"),

Have agreed as follows:

Article 1

Objectives

The objectives of the Parties under this Memorandum of Understanding ("MOU") are to:

(a) through dialogue and cooperation between them, strengthen their broader relationship and facilitate the improvement of their capacities to address labour matters;

(b) enhance the well-being of their respective workforces progressively, through the promotion of sound labour policies and practices, and better understanding of each other's labour system; and

(c) provide a forum to discuss and exchange views on labour issues of interest or concern.

Article 2

Key Commitments

1. The Parties affirm their respective commitments to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

2. Each Party shall seek to improve its labour laws, regulations, policies. and practices, taking into account the international labour commitments applicable to it and its domestic circumstances.

3. Each Party shall respect the other Party's right to set, administer and enforce its own labour laws, regulations, policies and priorities, as appropriate.

4. The Parties recognise that it is inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes.

5. The Parties recognise that it is inappropriate to encourage or gain trade or investment advantage by weakening or failing to enforce or administer their labour laws, regulations, policies and practices in a manner affecting trade between them.

6. Each Party shall promote public awareness of its labour laws and regulations domestically.

Article 3

Cooperation Framework

1. The Parties agree to establish a dialogue on labour matters of mutual interest and may explore opportunities for cooperation. Such dialogue and cooperation shall be subject to the availability of resources, the respective priorities of the Parties and their respective domestic laws and regulations.

2. Taking into account the Parties' interest and expertise in labour related areas, the Parties may jointly decide specific cooperative activities which may be implemented through a variety of means, such as the exchange of best practices and information, joint projects, studies, visits, workshops and dialogues as the Parties may agree. If the cooperative activities need funding, it shall be decided by the Parties on a case-by-case basis, and according to the respective priorities of the Parties, their domestic laws and regulations and budget available.

3. Each Party may, as appropriate, invite the participation of its stakeholders in identifying potential areas for cooperation and in undertaking cooperative activities.

Article 4

Institutional Arrangements

1. In order to facilitate communication between the Parties for the purposes of this MOU, each Party shall designate a contact point no later than 6 months after the date of its entry into force. Each Party shall notify the other Party promptly of any change of the contact point.

2. The Parties may exchange information and coordinate activities by any means of communication, including internet and videoconference.

3. The Parties may agree to meet in order to discuss and exchange views on matters of mutual interest, consider areas of potential cooperative activities, and address any issue that may arise between them.

4. Each Party may, having regard to its own domestic circumstances, consult its stakeholders over matters relating to the operation of this MOU by whatever means that Party considers appropriate.

Article 5

Consultations

1. The Parties shall endeavour, at all times, to make every effort to settle in good faith any issue concerning the interpretation, implementation or application of this MOU through dialogue, cooperation and consultations.

2. Should any issue arise concerning the interpretation, implementation or application of this MOU, a Party may request consultations with the other Party, through its contact point. Any difference that may arise under or relating to this MOU shall be resolved solely between the Parties in accordance with this Article.

3. The Parties shall complete the consultations as soon as practicable, following the receipt by the requested Party of the request for consultations pursuant to paragraph 2.

Article 6

Final Provisions

1. This MOU is concluded separately from, but alongside, the FTA.

2. This MOU shall enter into force on the same date as that of the FTA.

3. Either Party may terminate this MOU by written notification to the other Party. This MOU shall expire 180 days after the date of such notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this MOU.

DONE in duplicate at Hong Kong and Santiago on the dates indicated, in the English language.

FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

Dated this day of , 2012 Hong Kong

Dated this day of , 2012 Santiago