United States—Panama Trade Promotion Agreement

The Government of the United States of America and the Government of the Republic of Panama, resolved to:

STRENGTHEN the special bonds of friendship and cooperation between them and promote regional economic integration;

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

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

AVOID distortions to their reciprocal trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

AGREE that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement;

BUILD on their respective rights and obligations under the Marrakesh Agreement

Establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation;

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

ENHANCE the competitiveness of their firms in global markets;

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

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

CREATE new opportunities for economic and social development in their respective territories;

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

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

BUILD on their respective international commitments on labor matters;

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

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

PRESERVE their flexibility to safeguard the public welfare; and

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

HAVE AGREED as follows:

Chapter One. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Objectives

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

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

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

(c) promote conditions of fair competition in the free trade area;

(d) substantially increase investment opportunities in the territories of the Parties;

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

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

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

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

Article 1.3. Relations to other Agreements

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

2. Articles VII and VIII of the Treaty Between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investments, with Annex and Agreed Minutes, signed at Washington on October 27, 1982 (the "Treaty") shall be suspended on the date of entry into force of this Agreement.

3. Notwithstanding paragraph 2,

(a) for a period of ten years beginning on the date of entry into force of this Agreement, Articles VII and VIII of the Treaty shall not be suspended:

(i) in the case of investments covered by the Treaty as of the date of entry into force of this Agreement; or

(ii) in the case of a dispute that arose prior to the date of entry into force of this Agreement and that is otherwise eligible to be submitted for settlement under Article VII or VIII of the Treaty; and

(b) Article VII of the Treaty shall not be suspended in the case of a dispute that arises on or after the date of entry into force of this Agreement out of an investment agreement that was in effect before the date of entry into force of this Agreement, that is otherwise eligible to be submitted for settlement under Article VII of the Treaty.

4. In the event either Party terminates this Agreement in accordance with Article 22.5 (Entry into Force and Termination), Articles VII and VIII of the Treaty, to the extent suspended, shall automatically resume operation and shall continue in full force and effect as provided therein.

Article 1.4. Extent of Obligations

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

Chapter Two . General Definitions

Article 2.1 . Definitions of General Application

For purposes of this Agreement, unless otherwise specified:
central level of government means:

(a) for Panama, the national level of government; and

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

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

covered investment means, with respect to a Party, an investment, as defined in Article 10.29 (Definitions), in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

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

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

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

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

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

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

days means calendar days;

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

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

GATS means the WTO General Agreement on Trade in Services;

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

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

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

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

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

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

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

Party means any State for which this Agreement is in force;

person means a natural person or an enterprise;

person of a Party means a national or an enterprise of a Party;

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

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

regional level of government means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Panama, "regional level of government" is not applicable;

Safeguards Agreement means the WTO Agreement on Safeguards;

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

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

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

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

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

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

Property Rights;

WTO means the World Trade Organization; and

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

Annex 2.1. Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified: natural person who has the nationality of a Party means:

(a) with respect to Panama, a Panamanian national by birth, naturalization, or adoption as provided in Articles 9, 10, and 11 of the Constitution of the Republic of Panama; and

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

(a) with respect to Panama, 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) with respect to the United States,

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

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

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

Chapter Three. National Treatment and Market Access for Goods

Article 3.1. Scope and Coverage

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

Section A. National Treatment

Article 3.2. National Treatment

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

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

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

Section B. Tariff Elimination

Article 3.3. Tariff Elimination

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

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

3. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 3.3. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 3.3 for the good when approved by each Party in accordance with its applicable legal procedures.

4. For greater certainty, a Party may:

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

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

Section C. Special Regimes

Article 3.4. Waiver of Custom Duties

1. Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient, the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. Neither Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3. Panama may maintain existing measures inconsistent with paragraphs 1 and 2, provided it maintains such measures in accordance with Article 27.4 of the SCM Agreement. Panama may not maintain any such measures after December 31, 2009.

Article 3.5. Temporary Admission of Goods

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

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

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

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

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

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

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

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

(d) be capable of identification when exported;

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

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

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

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

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

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

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

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

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

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

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

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

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

Article 3.6. Goods Re-Entered after Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.

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

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

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

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

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

Advertising Materials

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

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

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

Section D. Non-Tariff Measures

Article 3.8. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*. (1)

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

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

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

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

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

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

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

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

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

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

6. Panama may not, as a condition for engaging in importation or for the import of a good, require a person of the United States to establish or maintain a contractual or other relationship with a dealer in its territory.

7. Panama may not remedy a violation or alleged violation of any law, regulation, or other measure regulating or otherwise relating to the relationship between any dealer in its territory and any person of the United States, by prohibiting or restricting the importation of any good of the United States.

8. For purposes of this Article:

dealer means a person of Panama who is responsible for the distribution, agency, concession, or representation in the territory of Panama of goods of the United States; and

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

Article 3.9. Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

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

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

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

3. Neither Party may apply an import licensing procedure to a good of the other Party unless it has provided notification in accordance with paragraph 2.

Article 3.10. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

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

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

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

Article 3.11. Export Taxes

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

Section E. Other Measures

Article 3.12. Distinctive Products

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

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

Section F. Agriculture

Article 3.13. Scope and Coverage

This Section applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

Article 3.14. Administration and Implementation of Tariff-Rate Quotas

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

2. Each Party shall ensure that:

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

(b) subject to subparagraph (c), any person of a Party that fulfills the Party's legal and administrative requirements shall be eligible to apply and to be considered for an in-quota quantity allocation under the Party's TRQs;

(c) it does not, under its TRQs:

(i) allocate any portion of an in-quota quantity to a producer group;

(ii) condition access to an in-quota quantity on purchase of domestic production; or

(iii) limit access to an in-quota quantity only to processors.

(d) solely government authorities administer its TRQs and government authorities do not delegate administration of its TRQs to producer groups or other non- governmental organizations, except as provided in Appendix I to the General Notes of the Schedule of Panama to Annex 3.3; and

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

3. Each Party shall make every effort to administer its TRQs in a manner that allows importers to fully utilize them.

4. Neither Party may condition application for, or use of, an in-quota quantity allocation under a TRQ on the re-export of an agricultural good.

5. Neither Party may count food aid or other non-commercial shipments in determining whether an in-quota quantity under a TRQ has been filled.

6. On request of either Party, the Parties shall consult regarding the administration of the importing Party's TRQs.

Article 3.15. Agricultural Export Subsidies

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

2. Except as provided in paragraph 3, neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

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

Article 3.16. Export State Trading Enterprises

The Parties shall work together toward an agreement on export state trading enterprises in the WTO that:

(a) eliminates restrictions on the right to export;

(b) eliminates any special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of their country's total exports of an agricultural good; and

(c) ensures greater transparency regarding the operation and maintenance of export state trading enterprises.

Article 3.17. Agricultural Safeguard Measures

1. Notwithstanding Article 3.3, a Party may apply a measure in the form of an additional import duty on an originating

agricultural good listed in that Party's Schedule to Annex 3.17, provided that the conditions in paragraphs 2 through 8 are met. The sum of any such additional import duty and any other customs duty on such good shall not exceed the lowest of:

(a) the base rate of duty provided in the Party's Schedule to Annex 3.3;

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

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

2. A Party may apply an agricultural safeguard measure during any calendar year if the quantity of imports of the good during such year exceeds the trigger level for that good set out in its Schedule to Annex 3.17.

3. The additional duty under paragraph 1 shall be set according to each Party's Schedule to Annex 3.17.

4. Neither Party may apply an agricultural safeguard measure and at the same time apply or maintain:

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

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

with respect to the same good.

5. Neither Party may apply or maintain an agricultural safeguard measure on a good:

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

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

6. A Party shall implement an agricultural safeguard measure in a transparent manner.

Within 60 days after applying such a measure, the Party applying the measure shall notify the other Party, in writing, and shall provide it relevant data concerning the measure. On request, the Party applying the measure shall consult with the other Party regarding application of the measure.

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

8. Neither Party may apply on an originating agricultural good any safeguard duty pursuant to the WTO Agreement on Agriculture or any successor provisions thereof.

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

10. For purposes of this Article and Annex 3.17, agricultural safeguard measure means a measure described in paragraph 1.

Article 3.18. Sugar Compensation Mechanism

1. In any year, the United States may, at its option, apply a mechanism that results in compensation to Panama's exporters of sugar goods in lieu of according duty-free treatment to some or all of the duty-free quantities of sugar goods established for Panama in paragraph 6 of Appendix I to the General Notes of the Schedule of the United States to Annex 3.3. Such compensation shall be equivalent to the estimated economic rents that Panama's exporters would have obtained on exports to the United States of any such amounts of sugar goods and shall be provided within 30 days after the United States exercises this option. The United States shall notify Panama at least 90 days before it exercises this option and, on request, shall enter into consultations with Panama regarding application of the mechanism.

2. For purposes of this Article, sugar good means a good provided for in paragraph 6(c), (g), or (j) of Appendix I to the General Notes of the Schedule of the United States to Annex 3.3.

Article 3.19. Agriculture Review Commission

The Parties shall establish an Agriculture Review Commission in the 14th year after the date of entry into force of this Agreement to review the implementation and operation of the Agreement as it relates to trade in agricultural goods. The Agriculture Review Commission shall evaluate the effects of trade liberalization under the Agreement, the operation of Article 3.17 and possible extension of agricultural safeguard measures under that Article, progress toward global agricultural trade reform in the WTO, and developments in world agricultural markets. The Agriculture Review Commission shall report its findings and any recommendations to the Commission.

Article 3.20. Committee on Agricultural Trade

1. No later than 90 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee shall provide a forum for:

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

(b) facilitating trade in agricultural goods between the Parties;

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

(d) addressing barriers to trade in agricultural goods; and

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

3. The Committee shall meet at least once a year unless it decides otherwise. Meetings of

the Committee shall be chaired by the representatives of the Party hosting the meeting.

4. All decisions of the Committee shall be taken by mutual agreement.

Section G. Textiles and Apparel

Article 3.21. Customs Cooperation

1. The customs authorities of the Parties shall cooperate for purposes of:

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

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

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

2. In furtherance of paragraph 1, each Party shall adopt or maintain laws that:

(a) authorize its officials to take swift action to deter circumvention and to carry out obligations under this Chapter relating to customs cooperation and information sharing; and

(b) establish criminal penalties and civil or administrative penalties that effectively deter engaging in, attempting to engage in, or facilitating activities related to circumvention.

3. On request of a Party, the other Party shall provide, consistent with its laws, regulations,

and procedures, production, trade, and transit documents and other information necessary to determine:

(a) that an enterprise has made an accurate claim of origin for a textile or apparel good; or

(b) that an enterprise is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including:

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

(ii) laws, regulations, and procedures of the importing Party or the exporting Party that give effect to other international agreements regarding trade in textile or apparel goods.

Article 5.6 (Confidentiality) shall apply to any information that the providing Party designates as confidential.

4. (a)

On the written request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to make the determination described in paragraph 3(a) or (b), regardless of whether an importer claims

preferential tariff treatment for a textile or apparel good for which a claim of origin has been made.

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

(c) The exporting Party may conduct a verification of exporting enterprises within its territory on its own initiative.

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

(c) The exporting Party may conduct a verification of exporting enterprises within its territory on its own initiative.

5. The exporting Party may allow the importing Party to participate in a verification conducted under paragraph 4, including through a site visit. If the importing Party believes it is necessary for it to participate in a site visit, the competent authority of the importing Party shall provide a written request to the competent authority of the exporting Party. Site visits shall be conducted in accordance with the laws, regulations, and procedures of the exporting Party. (2) If the exporting Party does not allow the participation of the importing Party, the importing Party may take appropriate action, which may include denying preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

6. (a) The competent authority of the importing Party shall provide a written request to participate in a site visit not less than 14 days before the proposed dates of the site visit. The request shall identify the number of enterprises to be visited, the proposed dates of the visit, and the reason for the visit.

(b) The importing Party shall ensure that its competent authority does not inform any person, other than the responsible officials of the exporting Party, of a request under subparagraph (a) or its contents. The exporting Party shall ensure that its competent authority and any other person in its territory do not provide prior notice to the enterprise to be visited. The exporting Party or, if the exporting Party requests or authorizes the importing Party to undertake such a verification, the importing Party shall seek permission to conduct a site visit from a responsible person of the enterprise at the time of the visit.

(c) If the enterprise denies permission to conduct a site visit: (3)

(i) the visit shall not occur;

(ii) the exporting Party shall not issue any certificates, visas, or export licenses that may be required to accompany textile or apparel goods that the enterprise produces or exports when such goods are exported to the importing Party, until the exporting Party receives information sufficient to enable it to make the determination in paragraph 3(a) or (b); and

(iii) the importing Party may deny entry of textile or apparel goods produced or exported by the enterprise, until the importing Party receives information sufficient to enable it to make the determination in paragraph 3(a) or (b).

(d) On completion of a site visit in which the importing Party has participated, the importing Party and exporting Party shall discuss their findings and the importing Party shall subsequently provide to the exporting Party a written report of the results of the visit. The exporting Party shall have the opportunity to respond to the report. The written report shall include:

(i) the name of the enterprise visited;

(ii) for each shipment checked, information discovered relating to circumvention;

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

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

(A) a textile or apparel good subject to a verification conducted under paragraph 4(a) for the purpose of making the determination in paragraph 3(a); or

(B) in the case of a verification conducted under paragraph 4(a) for the purpose of making the determination in paragraph 3(b), any textile or apparel good exported or produced by the enterprise.

7. (a) (i) During a verification conducted under paragraph 4(a), if there is insufficient information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include suspending the application of such treatment to:

(A) in the case of a verification conducted under paragraph 4(a) for the purpose of making the determination in paragraph 3(a), the textile or apparel good for which a claim for preferential tariff treatment has been made; and

(B) in the case of a verification conducted under paragraph 4(a) for the purpose of making the determination in paragraph 3(b), any textile or apparel good exported or produced by the enterprise subject to that verification for which a claim for preferential tariff treatment has been made.

(ii) On completion of a verification conducted under paragraph 4(a), if there is insufficient information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(iii) During or on completion of a verification conducted under paragraph 4(a), if the importing Party discovers that an enterprise has provided incorrect information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(b) (i) During a verification conducted under paragraph 4(a), if there is insufficient information to determine the country of origin, the importing Party may take appropriate action, which may include detention of any textile or apparel good exported or produced by the enterprise subject to the verification.

(ii) On completion of a verification conducted under paragraph 4(a), if there is insufficient information to determine the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(iii) During or on completion of a verification conducted under paragraph 4(a), if the importing Party discovers that an enterprise has provided incorrect information as to the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(c) The importing Party may continue to take appropriate action under any provision of this paragraph only until it receives information sufficient to enable it to make the determination in paragraph 3(a) or (b), as the case may be.

8. Not later than 45 days after it completes a verification on behalf of the importing Party under paragraph 4(a), the exporting Party shall provide the importing Party a written report on the results of the verification. The report shall include all documents and facts supporting any conclusion that the exporting Party reaches. After receiving the report, the importing Party shall notify the exporting Party of any action it will take under paragraph 7(a)(ii) or (iii) or 7(b)(ii) or (iii), taking into account the information provided in the report.

9. (a) A Party may publish the name of an enterprise that:

(i) the Party has determined, in accordance with its applicable procedures, to be engaged in intentional circumvention of laws, regulations, and procedures of either Party or international agreements affecting trade in textile or apparel goods; or

(ii) has failed to demonstrate that it produces, or is capable of producing, the textile or apparel goods subject to a verification conducted under paragraph 4(a).

(b) Each Party shall provide that an enterprise whose name has been included in a list that the Party publishes in accordance with subparagraph (a) may request that the Party remove the enterprise from its list. If the importing Party finds that the enterprise has not committed any violations described in subparagraph (a) for a period of not less than three years after the date on which the enterprise's name was published, the importing Party shall remove the enterprise from its list as of the next publication of the list.

(c) A Party's decision to publish the name of an enterprise in accordance with subparagraph (a) shall not, in itself, constitute a basis for the Party to deny entry to textile or apparel goods produced or exported by the enterprise.

(2) For greater certainty, all site visits conducted under this Article shall be conducted under the authority of the exporting Party. The participation of officials of the importing Party at the visit shall be limited to the purposes stated in this Article and shall not be deemed to confer any authority on such officials over persons or enterprises located within the territory of the exporting Party.

(3) Permission to conduct a site visit shall be deemed to have been denied if the enterprise does not allow the responsible officials of either Party access to the enterprise's premises, including its production and storage areas and other facilities or to production records relating to textile or apparel goods that have been exported to the territory of the importing Party, the enterprise's production capabilities in general, the number of persons the enterprise employs, or other records or information relevant to making the determination in paragraph 3(a) or (b).

Article 3.22. Monitoring

1. The eligible Party shall establish and maintain programs to monitor the importation, production, exportation, movement in transit, and processing or manipulation in any free trade zone, foreign trade zone, or export processing zone of textile or apparel goods, as specified in this article. These programs shall provide the information necessary for each Party to ascertain whether a violation of its laws relating to trade in textile or apparel goods or an act of circumvention is occurring or has occurred.

2. The eligible Party shall establish and maintain a program to verify the accuracy of claims of origin relating to textile or apparel goods that are exported to the other Party. This program shall include on-site government inspections of any enterprise of the eligible Party involved in the production of any such good without prior notice to the enterprise to verify that the enterprise complies with laws of the eligible Party relating to trade in textile or apparel goods and that the enterprise's production of and capability to produce such goods are consistent with claims regarding the origin of such goods.

3. For each shipment of textile or apparel goods that an enterprise in its territory produces for exportation to the other Party or exports to the other Party, the eligible Party shall require the enterprise to maintain in the eligible Party records relating to such production or exportation for a period of five years from the date on which such records are created. The eligible Party also shall require each of its enterprises that produces textile or apparel goods to maintain in the eligible Party records relating to its production capabilities in general, the number of persons it employs, and any other records and information sufficient to allow officials of each Party to verify the enterprise's production and exportation of textile or apparel goods, including:

(a) records demonstrating that the materials used to produce or assemble textile or apparel goods were obtained or produced by the enterprise and were available for production, such as:

(i) bills of lading from the persons that supplied the materials;

(ii) customs clearance records or equivalent records if the materials were imported into the eligible Party; and

(iii) transaction records, including:

(A) commercial invoices, if the materials were purchased;

(B) records documenting transfers of funds;

(C) mill certificates if the materials were spun, extruded (for yarns) or woven, knitted, or formed by any other fabric forming process (for example, tufting) by an enterprise of the eligible Party;

(D) production records, if the enterprise produced the materials; and

(E) purchase orders, if the materials were imported from a foreign producer, broker, trader, or other intermediary;

(b) with respect to textile or apparel goods that the enterprise has produced with respect to which a claim of origin is made, production records that substantiate the claim or marking, such as:

(i) cutting records for products assembled from cut components;

(ii) assembly or production records that the enterprise creates that document daily production, including workers' daily production records, wage records, production steps, and sewing tickets; and

(iii) employee time cards, payment records, or other documentation showing which employees were working, how long they worked, and what work they performed during the period the goods were produced; and

(c) with respect to textile or apparel goods that a subcontractor has produced in whole or in part for the enterprise and with respect to which a claim of origin is made, records that substantiate the claim of origin, such as:

(i) cutting records for products assembled from cut components;

(ii) if partially assembled by the subcontractor, production records documenting the partial assembly;

(iii) bills of lading; and

(iv) transfer documents to the shipper or primary contractor and proof of payment by the shipper or primary contractor for the work done.

4. The eligible Party shall establish and maintain a program to ensure that textile or apparel goods that are imported into or exported from the eligible Party or that are processed or manipulated in any free trade zone, foreign trade zone, or export processing zone in the eligible Party en route to the other Party are examined to ascertain prima facie that they are marked with the country of origin in accordance with the documents accompanying the goods and that such documents accurately describe the goods.

(a) This program shall provide for:

(i) immediate referral by the eligible Party's officials of suspected violations of either Party's laws relating to circumvention to the appropriate enforcement authorities; and

(ii) issuance by the eligible Party to the other Party of a written report describing each violation relating to circumvention, including a failure to maintain or produce records, any other act of circumvention involving textile or apparel goods destined for the other Party occurring in the territory of the eligible Party, and any enforcement action taken or penalty imposed by the eligible Party.

(b) Article 5.6 (Confidentiality) shall apply to any information contained in a report under subparagraph (a)(ii) that the eligible Party designates as confidential.

(c) Notwithstanding subparagraph (b), a Party may publish the name of an enterprise that it has determined is engaged in circumvention.

5. If the eligible Party discovers conduct by an enterprise that it suspects is a violation of either Party's laws relating to circumvention, and the conduct has not been described in a report under paragraph 4(a)(ii), the eligible Party shall report the conduct to the other Party not later than 14 days after the eligible Party discovers the conduct. The eligible Party shall also immediately initiate a detailed review of all textile or apparel goods that the enterprise has produced for exportation to the other Party or exported to the other Party during the six months preceding the date that the eligible Party discovered the conduct. The eligible Party shall prepare a report describing the results of that review and shall transmit the report to the other Party not later than 60 days after it initiates the review of the enterprise or such later date as the Parties may agree.

6. A report describing the results of a review conducted pursuant to paragraph 5 shall include the following:

(a) the name and address of the enterprise investigated;

(b) the nature of the suspected violation (for example, failure to maintain adequate production records or making false statements relating to country of origin or production);

(c) a brief description of the evidence of a violation and any penalty imposed or other action taken;

(d) the identification numbers of the invoices or certificates, if required, and the date of exportation of the goods subject to the review;

(e) the product category, description, and quantity of the goods included in the shipments to the other Party; and

(f) purchase orders, bills of lading, contracts, payment records, invoices, and other records indicating the origin of the goods included in the shipments to the other Party, and, if known, information identifying the importer of the goods in the other Party.

7. The eligible Party shall obtain and annually update the following information regarding its enterprises:

(a) the name and address of the enterprise and the location of all of its textile or apparel facilities in the eligible Party;

(b) the telephone number, facsimile number, and e-mail address of the enterprise;

(c) the names and nationalities of the owners, if known, or the directors and corporate officers and their positions within the enterprise;

(d) the number of employees of the enterprise and their occupations;

(e) the number and type of machines the enterprise uses to produce textile or apparel goods and the approximate number of hours the machines operate per week;

(f) a general description of the textile or apparel goods the enterprise produces and the enterprise's production capacity; and

(g) the name of, and contact information for, each of the enterprise's customers in the other Party.

The eligible Party shall provide this information to the other Party within three months after the date of entry into force of this Agreement and annually thereafter. The other Party shall consider the information that the eligible Party provides under this paragraph to have been designated as confidential information in accordance with Article 5.6 (Confidentiality).

Article 3.23. Consultations on Customs Cooperation and Monitoring

1. On the written request of a Party, the Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise, or to discuss ways to improve customs cooperation, under Articles 3.21 and 3.22. Unless the Parties otherwise agree, consultations shall begin within 30 days after delivery of the request, and conclude within 90 days after delivery of the request.

2. A Party may request technical or other assistance from the other Party in carrying out Articles 3.21 and 3.22. The Party receiving such a request shall make every effort to respond favorably and promptly to it.

Article 3.24. Textile Safeguard Measures

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

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

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

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

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

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

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

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

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

(a) neither Party may maintain a textile safeguard measure for a period exceeding three years;

(b) neither Party may apply a textile safeguard measure to the same good of the other Party more than once;

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

(d) neither Party may maintain a textile safeguard measure beyond the transition period.

6. The Party applying a textile safeguard measure shall provide to the Party against whose

good the measure is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the textile safeguard measure. Such concessions shall be limited to textile or apparel goods, unless the Parties otherwise agree. If the Parties are

unable to agree on compensation within 30 days of application of a textile safeguard measure, the Party against whose good the measure is taken may take tariff action having trade effects substantially equivalent to the trade effects of the textile safeguard measure. Such tariff action may be taken against any goods of the Party applying the measure. The Party taking the tariff action shall apply such action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the textile safeguard measure terminates.

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

(b) Neither Party may apply, with respect to the same good at the same time, a textile safeguard measure and:

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

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

Article 3.25. Rules of Origin and Related Matters

Consultations on Rules of Origin

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

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

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

Fabrics, Yarns, and Fibers Not Available in Commercial Quantities

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

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

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

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

(e) The United States shall add a fabric, yarn, or fiber in an unrestricted quantity to the list in Annex 3.25 if, before the date of entry into force of this Agreement, the United States has determined that the fabric, yarn, or fiber is not available in commercial quantities in the United States pursuant to:

(i) section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), or section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)); or

(ii) procedures under another free trade agreement to which the United States is a party that permit the United States to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner, and the United States has added the fabric, yarn, or fiber in an unrestricted quantity to a list of fabrics, yarns, and fibers that are not available in commercial quantities in a timely manner established under that free trade agreement.

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

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

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

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

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

De Minimis

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

8. Notwithstanding paragraph 7, a good containing elastomeric yarns (5) in the component of the good that determines the tariff classification of the good shall originate only if such yarns are wholly formed and finished in the territory of one or both of the Parties.

Treatment of Sets

9. Notwithstanding the specific rules of origin in Annex 4.1 (Specific Rules of Origin), textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System, shall not be regarded as originating goods unless each of the products in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the adjusted value of the set. (6)

Treatment of Nylon Filament Yarn

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

Consultations on Cumulation

11. If Panama enters into a free trade agreement covering trade in textile or apparel goods with a country with which the United States has entered into a free trade agreement, the Parties shall enter into consultations in accordance with paragraphs 1 and 3, with a view to deciding whether any material that is a good of that country that is incorporated into a good of a Party classified under chapter 61 or 62 of the Harmonized System may be counted for purposes of determining whether the good classified under chapter 61 or 62 is an originating good under this Agreement.

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

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

(6) For purposes of this paragraph, the term "adjusted value" has the meaning ascribed to that term in Article 4.23 (Definitions).

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

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

Article 3.27. Duty-Free Treatment for Certain Goods

1. The Parties may identify at any time particular textile or apparel goods of the exporting Party that they mutually agree fall within:

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

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

(c) traditional folklore handicraft goods; or

(d) textile or apparel goods that substantially incorporate one or more molas.

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

Article 3.28. Duty-Free Treatment for Certain Guayabera-Style Dresses and Shirts

An importing Party shall grant duty-free treatment to dresses of heading 62.04 and shirts and blouses of heading 62.05 or 62.06 containing:

(a) short or long sleeves;

a center front placket with button closure that runs the full length of the good; a collar and yoke;

either pleats or embroidery that run the full length of the good on both sides of the center front placket from the yoke to the hem with a decorative button where the pleats or embroidery meet the yoke;

corresponding pleats or embroidery that run the full length of the good on both sides of the back from the yoke to the hem with a decorative button where the pleats or embroidery meet the yoke;

four pockets with buttons on the front of the good; a straight hem; and

side vents or slits with a button closure,

provided that the good is both cut and sewn or otherwise assembled in the territory of one or both of the Parties.

Article 3.29. Duty-Free Treatment for Certain Socks

The United States shall grant duty-free treatment to:

(a) babies' socks and booties classified under tariff item 6111.20.6050, 6111.30.5050, or 6111.90.5050 of the Harmonized Tariff Schedule of the United States; and

(b) socks classified under subheading 6115.91 through 6115.99,

provided that the good is sewn or otherwise assembled in Panama with thread wholly formed and finished in the United States from components knit-to-shape in the United States from yarns wholly formed and finished in the United States.

Article 3.30. Definitions

For purposes of this Section:

circumvention means providing a false declaration or false information for the purpose of, or with the effect of, violating or evading existing customs, country of origin labeling, or trade laws of a Party relating to imports of textile and apparel goods, if such action results in the avoidance of tariffs, quotas, embargoes, prohibitions, restrictions, trade remedies, including antidumping or countervailing duties, or safeguard measures, or in obtaining preferential tariff treatment. Examples of circumvention include illegal transshipment; rerouting; fraud; false declarations concerning country of origin, fiber content, quantities, description, or classification; falsification of documents; and smuggling;

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

eligible Party means the Party whose calendar year exports by value of goods classified under Harmonized System chapter 61 or 62 (excluding subheadings 6117.90 and 6217.90) as a percentage of its calendar year total exports by value of goods

classified under Harmonized System chapters 50 through 63 exceed said percentage of the other Party's exports by value of goods classified under Harmonized System chapters 50 through 63. For purposes of this definition, the first calendar year shall be the most recent calendar year for which a full 12 months of data are available as of the date of entry into force of this Agreement. If either Party's calendar year exports by value of goods classified under Harmonized System chapters 50 through 63 fall below US$2 million, then the export data from the most recent prior calendar year in which both Parties' exports of such goods exceeded US$2 million shall be used for purposes of this definition;

enterprise, in the case of Panama, means an enterprise as defined in Article 2.1 (Definitions of General Application), and includes an enterprise involved in:

(a) production, processing, or manipulation of textile or apparel goods in the territory of Panama, including in any free trade zone, foreign trade zone, or export processing zone;

(b) importation of textile or apparel goods into the territory of Panama, including into any free trade zone, foreign trade zone, or export processing zone; or

(c) exportation of textile or apparel goods from the territory of Panama, including from any free trade zone, foreign trade zone, or export processing zone;

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

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

mola (or morra in the native Kuna language) means a good produced through reverse appliqué, traditional and historic in nature, made within Panama, of small decorative pieces of cloth onto a larger piece, elaborated back to front with a combination of fabrics of different bright colors. A mola is made up by hand in two or more layers of cut fabrics, handsewn one over the other, and is usually inspired in nature, cosmic view, or geometrical designs;

textile or apparel good means a good listed in the Annex to the Agreement on Textiles and Clothing, except for those goods listed in Annex 3.30;

textile safeguard measure means a measure applied under Article 3.24.1;

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

Agreement; and

wholly formed and finished means:

(a) when used in reference to fabrics, all production processes and finishing operations necessary to produce a finished fabric ready for use without further processing. These processes and operations include formation processes, such as weaving, knitting, needling, tufting, felting, entangling, or other such processes, and finishing operations, including bleaching, dyeing, and printing; and

(b) when used in reference to yarns, all production processes and finishing operations, beginning with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

Section H. Institutional Provisions

Article 3.31. Committee on Trade In Goods

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

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

3. The Committee's functions shall include:

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

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff

measures, and, if appropriate, referring such matters to the Commission for its consideration; and

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

Section I. Definitions

Article 3.32. Definitions

For purposes of this Chapter:

AD Agreement means the WTO Agreement on Implementation of Article VI of the General

Agreement on Tariffs and Trade 1994;

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

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

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

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

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

consumed means

(a) actually consumed; or

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

duty-free means free of customs duty;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO

Agreement on Agriculture, including any amendment of that article;

goods intended for display or demonstration includes their component parts, ancillary

apparatus, and accessories;

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

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

Import Licensing Agreement means the WTO Agreement on Import Licensing Procedures; performance requirement means a requirement that:

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

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

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

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

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows, but does not include a requirement that an imported good be:

(f) subsequently exported;

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

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

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

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

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

Chapter Four. Rules of Origin and Origin Procedures

Section A. Rules of Origin

Article 4.1. Originating Goods

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

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

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

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

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

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

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

Article 4.2: Regional Value Content

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

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

RVC = AV - VNM x 100 AV

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

RVC = VOM x 100 AV

where,

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

AV is the adjusted value;

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

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

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

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

Method for Automotive Products (“Net Cost Method”)

RVC = NC - VNM x 100 NC

where,

RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and

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

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

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

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

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

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

(a) averaged:

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

(ii) over any quarter or month; or

(iii) over the automotive producer’s fiscal year,

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

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

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

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

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

Article 4.3. Value of Materials

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

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

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

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

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

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

Article 4.4. Further Adjustments to the Value of Materials

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

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

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

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

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

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

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

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

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

Article 4.5. Accumulation

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

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

Article 4.6. De Minimis Rule

1. Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other

applicable requirements in this Chapter.

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

Article 4.7. Fungible Goods and Materials

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

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

(b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

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

Article 4.8. Accessories, Spare Parts, and Tools

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

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

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

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

Article 4.9. Packaging Materials and Containers for Retail Sale

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

Article 4.10. Packing Materials and Containers for Shipment

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

Article 4.11. Indirect Materials Used In Production

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

Article 4.12. Transit and Transshipment

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

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

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

Article 4.13. Sets of Goods

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

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

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

Article 4.14. Consultation and Modifications

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

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

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

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

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

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

Section B. Origin Procedures

Article 4.15. Claims of Origin

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

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

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

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

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

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

(c) information demonstrating that the good is originating;

(d) date of the certification; and

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

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

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

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

Neither Party may require an exporter or producer to provide a written or electronic certification to another person.

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

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

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

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

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

Article 4.16. Obligations Relating to Importations

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

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

3. Neither Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment if the importer:

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

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

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

(a) declare in the importation document that the good is originating;

(b) have in its possession at the time the declaration referred to in subparagraph (a) is made, a written or electronic certification as described in Article 4.15, if the certification forms the basis for the claim;

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

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

(e) when a certification by a producer or exporter forms the basis for the claim, either provide or have in place, at the importer's option, an arrangement to have the

producer or exporter provide, on request of the importing Party's customs authority, all information relied on by such producer or exporter in making such certification; and

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

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

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

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

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

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

7. Nothing in this Article shall prevent a Party from taking action under Article 3.21 (Customs Cooperation).

Article 4.17. Exceptions

Neither Party may require a certification or information demonstrating that a good is originating where:

(a) the customs value of the importation does not exceed US$1,500 or the equivalent amount in Panamanian currency, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements; or
(b) it is a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

Article 4.18. Obligations Relating to Exportations

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 4.15 shall, on request, provide a copy to the appropriate authority of the Party;

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

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

2. Neither Party may impose penalties on an exporter or a producer for providing an

incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

Article 4.19. Record Keeping Requirements

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 4.15 shall maintain, for a minimum of five years from the date the certification was issued, all records and documents necessary to demonstrate that a good for which the producer or exporter provided a certification was an originating good, including records and documents concerning:

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

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

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

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a minimum of five years from the date of importation of the good:

(a) in cases where the importer bases its claim on its certification or knowledge that the good is an originating good, all records and documents necessary to demonstrate that the good qualified for the preferential tariff treatment; and

(b) in cases where the importer bases its claim on a certification of the exporter or producer, a copy of the certification that served as the basis for the claim.

Article 4.20. Verification

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

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

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

(c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 4.19 or observe the facilities used in the production of the good, in accordance with the framework that the Parties develop pursuant to Article 4.21.2;

(d) for a textile or apparel good, the procedures set out in Article 3.21 (Customs Cooperation); or

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

2. A Party may deny preferential tariff treatment to an imported good where:

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

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

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

3. A Party conducting a verification shall provide the importer a determination, in writing,

of whether the good is originating. The Party's determination shall include factual findings and the legal basis for the determination.

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

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

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

(c) the customs authority issued the advance ruling before the importing Party's determination.

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

Article 4.21. Common Guidelines

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

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

Article 4.22. Application of Certain Provisions

Panama may delay giving effect to:

(a) Article 4.15.1(a) as it relates to electronic certifications; and

(b) Article 4.15.1(b),

for a period of no longer than three years beginning on the date of entry into force of this Agreement.

Article 4.23. Definitions

For purposes of this Chapter:

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

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

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

(b) motor vehicles classified under subheading 8701.10 or 8701.30 through 8701.90;

(c) motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.21 or 8704.31; or

(d) motor vehicles classified under subheading 8703.21 through 8703.90;

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) waste and scrap derived from

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

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

raw materials;

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

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

identical goods means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

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

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

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

(g) catalysts and solvents; and

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

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

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

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

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

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

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

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

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

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

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

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

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

producer means a person who engages in the production of a good in the territory of a Party; production means growing, mining, harvesting, fishing, raising, trapping, hunting,

manufacturing, processing, assembling, or disassembling a good;

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

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

remanufactured goods means goods classified under Harmonized System Chapter 84, 85, 87, or 90, or heading 94.02, except goods classified under heading 84.18 or 85.16, that:

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

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

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

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

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

Chapter Five . Customs Administration and Trade Facilitation

Article 5.1. Publication

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

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

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

Article 5.2. Release of Goods

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

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

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

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

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

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

Article 5.3. Automation

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

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

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

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

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

(e) work towards developing electronic systems that are compatible with the other Party's systems in order to facilitate government to government exchange of bilateral trade data; and

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

Article 5.4. Risk Management

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

Article 5.5. Cooperation

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

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

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

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

(c) restrictions or prohibitions on imports or exports; and

(d) other customs matters as the Parties may agree.

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

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

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

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

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

(d) other information that the Parties agree is sufficient in the context of a particular request.

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

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

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

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

Article 5.6. Confidentiality

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

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

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

Article 5.7. Express Shipments

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

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

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

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

(d) to the extent possible, provide for certain goods to be cleared through customs with a minimum of documentation;

(e) under normal circumstances, provide for express shipments to be cleared within six hours after the necessary customs documents have been submitted, provided the shipment has arrived;

(f) apply without regard to an express shipment's weight or customs value; and

(g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at US$100 or less. (2)

(2) Notwithstanding this subparagraph, a Party may require express shipments to be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

Article 5.8. Review and Appeal

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

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

(b) judicial review of the determination.

Article 5.9. Penalties

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

Article 5.10. Advance Rulings

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

(a) tariff classification;

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

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

(d) whether a good is originating;

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

(f) country of origin marking;

(g) the application of quotas; and

(h) such other matters as the Parties may agree.

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

3. Each Party shall provide that advance rulings shall take effect on the date they are issued, or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

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

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

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

Article 5.11. Panamanian Free Zone Monitoring Program

1. Panama shall maintain its existing program of monitoring the importation, exportation, processing, and manipulation of goods in Panamanian free zones.

2. If the United States has a reasonable suspicion that a good for which an importer in the United States has made a claim for preferential tariff treatment under another free trade agreement to which the United States is a party has undergone further processing or operations in a Panamanian free zone, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or transport it to the territory of the United States, then the United States may request in writing that Panama:

(a) make available all records identified in the written request that relate to whether the good or an identical good, as defined in Article 4.23 (Definitions), was imported into, exported from, or processed or manipulated in a free zone; or

(b) conduct a visit to a free zone to verify whether such good was imported into, exported from, or processed or manipulated in the free zone.

Panama shall promptly grant any such request, except as provided in paragraph 5. In the written request, the United States shall state that it has a reasonable suspicion as described above.

3. The United States may request in writing that a U.S. official attend a visit under paragraph 2(b), and Panama shall grant any such request. (3)

4. Where Panama conducts a visit that U.S. officials do not attend, Panama shall, promptly after the conclusion of the visit, report the findings of such visit in writing to the United States.

5. If Panama denies a written request made under paragraph 2, Panama shall provide a written explanation for such denial and shall enter into consultations with the United States within 30 days of the request under paragraph 2 with a view to resolving the matter to the satisfaction of the Parties. If the Parties are unable to resolve the matter in these consultations, either Party may refer the matter to the Commission.

6. For greater certainty, nothing in this Article shall require a shipper or exporter of a good from a Panamanian free zone to the territory of the United States or an importer of a good from a Panamanian free zone into the territory of the United States to collect, retain, or report information in addition to the information the United States requires in accordance with this Agreement or otherwise requires to ensure compliance with U.S. laws or regulations governing importations of goods.

7. The United States shall treat any information that Panama provides pursuant to paragraphs 2, 4 and 5 as if Panama has designated it as confidential information, as provided in Article 5.6.

(3) Visits shall be conducted under the authority of Panamanian officials. The attendance of U.S. officials at a visit shall be limited to the purposes provided in this Article and shall not confer any authority to such officials within the territory of Panama.

Article 5.12. Application of Certain Provisions

Panama may delay giving effect to:

(a) Articles 5.1.1 and 5.1.2 for a period of no longer than two years;

(b) Articles 5.3 and 5.4 for a period of no longer than three years;

(c) Article 5.7 for a period of no longer than one year; and

(d) Article 5.10 for a period of no longer than two years,

beginning on the date of entry into force of this Agreement.

Chapter Six . Sanitary and Phytosanitary Measures

Objectives

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

Article 6.1. Affirmation of the SPS Agreement

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

Article 6.2. Scope and Coverage

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

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

Article 6.3. Committee on Sanitary and Phytosanitary Matters

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

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

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

facilitate trade between the Parties.

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

5. The Committee shall endeavor to ensure that sanitary and phytosanitary matters raised in the Committee are addressed in a timely manner.

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

7. The Committee shall provide a forum for:

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

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

(c) reviewing progress on sanitary and phytosanitary matters that may arise between the Parties' relevant agencies and ministries with a view to facilitating trade between the Parties.

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

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

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

8. Each Party shall ensure that appropriate representatives with responsibility for the

development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee.

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

10. The Committee shall perform its work in accordance with its terms of reference. The

Committee may revise its terms of reference and establish procedures to guide its operation.

11. All decisions of the Committee shall be taken by mutual agreement.

Chapter Seven. Technical Barriers to Trade

Objectives

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

Article 7.1. Affirmation of the TBT Agreement

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

Article 7.2. Scope and Coverage

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

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

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

(b) sanitary and phytosanitary measures.

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

Article 7.3. International Standards

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

Article 7.4. Trade Facilitation

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

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

Article 7.5. Conformity Assessment

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

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

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

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

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

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

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

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

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

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

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

Article 7.6. Technical Regulations

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

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

Article 7.7. Transparency

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

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

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

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

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

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

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

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

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

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

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

Article 7.8. Committee on Technical Barriers to Trade

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

2. The Committee's functions shall include:

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

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

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

(d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity

assessment bodies in the Parties' territories;

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

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

(g) at a Party's request, consulting on any matter arising under the TBT Agreement;

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

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

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

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

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

5. All decisions of the Committee shall be taken by mutual agreement.

Article 7.9. Information Exchange

If a Party requests any information or explanation pursuant to the provisions of this Chapter, the other Party shall provide such information or explanation in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.

Article 7.10 . Definitions

For purposes of this Chapter:

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

TBT Agreement means the WTO Agreement on Technical Barriers to Trade.

Chapter Eight . Trade Remedies

Section A. Safeguards

Article 8.1. Imposition of a Safeguard Measure

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

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

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

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

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

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

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

Article 8.2. Standards for a Safeguard Measure

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

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

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

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

5. On the termination of a safeguard measure, the rate of duty shall be no higher than the

rate that, according to the Party's Schedule to Annex 3.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

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

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

Article 8.3. Administration of Safeguard Proceedings

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

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

3. A Party shall impose a safeguard measure only following an investigation by the Party's competent investigating authority in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, mutatis mutandis.

4. In the investigation described in paragraph 3, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made a part of this Agreement, mutatis mutandis.

Article 8.4. Notification and Consultation

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

(a) initiating a safeguard proceeding under this Chapter;

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

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

2. A Party shall provide to the other Party a copy of the public version of the report of its

competent investigating authority required under Article 8.3.3.

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

Article 8.5. Compensation

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

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

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

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the later of:

(a) the termination of the safeguard measure, or

(b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination).

Article 8.6. Global Actions

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

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

3. Neither Party may apply, with respect to the same good, at the same time:

(a) a safeguard measure; and

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

Article 8.7. Definitions

For purposes of this Section:

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

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

safeguard measure means a measure described in Article 8.1.2;

serious injury means a significant overall impairment in the position of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

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

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

Section B. Antidumping and Countervailing Duties

Article 8.8. Antidumping and Countervailing Duties

1. The United States shall continue to treat Panama as a “beneficiary country” for purposes of 19 U.S.C. § 1677(7)(G)(ii)(III) and 1677(7)(H) and any successor provisions. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this paragraph.

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

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

Chapter Nine . Government Procurement

Article 9.1. Scope and Coverage

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

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

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

(b) subject to the conditions specified in Annex 9.1;

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

(d) that is not excluded from coverage.

3. For greater certainty relating to the procurement of digital products as defined in Article 14.6 (Definitions):

(a) covered procurement includes the procurement of digital products; and

(b) no provision of Chapter Fourteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.

4. This Chapter does not apply to:

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

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

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

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

(e) any good or service component of any contract that a procuring entity that is not listed in Sections A through C of Annex 9.1 awards; and

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

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

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

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

8. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual

means, provided they are not inconsistent with this Chapter.

Article 9.2. General Principles

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

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

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

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

3. Each Party shall apply to covered procurement of goods the rules of origin that it applies in the normal course of trade to those goods.

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

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

Article 9.3. Publication of Procurement Measures

Each Party shall promptly:

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

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

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

Article 9.4. Publication of Notice of Intended Procurement

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

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

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

Article 9.5. Time Limits for the Tendering Process

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

2. Notwithstanding paragraph 1, a procuring entity may establish a period for tendering that is less than 40 days, but in no case less than ten days, in the following circumstances:

(a) where the procuring entity published a separate notice containing a description of the procurement, the approximate time limits for the submission of tenders or, where appropriate, conditions for participation in a procurement, and the

address from which documents relating to the procurement may be obtained, at least 40 days and not more than 12 months before the final date for the submission of tenders;

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

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

Article 9.6. Tender Documentation

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

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

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

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

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

Article 9.7. Technical Specifications

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

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

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

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

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

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

5. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:

(a) to promote the conservation of natural resources; or

(b) to require a supplier to comply with generally applicable laws regarding

(i) fundamental principles and rights at work; and

(ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed.

Article 9.8. Requirements and Conditions for Participating In Procurement

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

2. Each procuring entity shall:

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

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

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

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

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

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

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

Article 9.9. Tendering Procedures

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

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

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

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

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

(d) for goods purchased on a commodity market;

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

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

may not exceed 50 percent of the amount of the initial contract; or

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

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

Article 9.10. Awarding of Contracts

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

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

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

Article 9.11. Information on Contract Awards

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

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

(a) the name of the entity;

(b) a description of the goods or services included in the contract;

(c) the name of the supplier awarded the contract;

(d) the value of the contract award; and

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

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

Article 9.12. Non-Disclosure of Information

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

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

(a) impede law enforcement;

(b) prejudice fair competition between suppliers;

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

(d) otherwise be contrary to the public interest.

Article 9.13. Ensuring Integrity In Procurement Practices

Further to Article 18.8 (Anti-Corruption Measures), each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On request of the other Party, a Party shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

Article 9.14. Exceptions

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between 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 a Party from adopting or maintaining measures:

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

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

(c) necessary to protect intellectual property; or

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

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

Article 9.15. Domestic Review of Supplier Challenges

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

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

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

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

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

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

(a) a sufficient period to prepare and submit written challenges, which in no case shall be less than ten days from the time when the basis of the complaint became

known or reasonably should have become known to the supplier;

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

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

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

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

Article 9.16. Modifications and Rectifications to Coverage

1. A Party may make technical rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules to Section A through C of Annex 9.1, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days after the notification. A Party that makes such a rectification or minor amendment shall not be required to provide compensatory adjustments to the other Party.

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

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

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

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

4. The Commission shall modify the relevant section of Annex 9.1 to reflect any agreed modification, technical rectification, or minor amendment.

Article 9.17. Definitions

For purposes of this Chapter:

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

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

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

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

procuring entity means an entity listed in Annex 9.1;

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

services includes construction services, unless otherwise specified;

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

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

Chapter Ten . Investment

Article 10.1. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
(a) investors of the other Party;
(b) covered investments; and
(c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.
2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party.
3. For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.2. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

Article 10.3. National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.4. Most-favored-nation Treatment

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

Article 10.5. Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

1 Article 10.5 shall be interpreted in accordance with Annex 10-A.

Article 10.6. Treatment In Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:
(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the latter Party shall provide the investor restitution or compensation, which in either case shall be in accordance with customary international law and, with respect to compensation, shall be in accordance with Article 10.7.2 through 10.7.4. 3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

Article 10.7. Expropriation and Compensation

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:
(a) for a public purpose;
(b) in a non-discriminatory manner;
(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
(d) in accordance with due process of law and Article 10.5. 2 Article 10.7 shall be interpreted in accordance with Annexes 10-A and 10-B.
2. Compensation shall:
(a) be paid without delay;
(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");
(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
(d) be fully realizable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Fifteen (Intellectual Property Rights).

Article 10.8. Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
(a) contributions to capital; For greater certainty, the reference to "the TRIPS Agreement" in paragraph 5 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.
(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
(c) interest, royalty payments, management fees, and technical assistance and other fees;
(d) payments made under a contract, including a loan agreement;
(e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and
(f) payments arising out of a dispute.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party. 4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, nondiscriminatory, and good faith application of its laws relating to:
(a) bankruptcy, insolvency, or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities, futures, options, or derivatives;
(c) criminal or penal offenses;
(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.9. Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any of the following requirements, or enforce any commitment or undertaking:
(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.
2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:
(a) to achieve a given level or percentage of domestic content;
(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
(b) Paragraph 1(f) does not apply:
(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; (4) or
(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws. (5)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
(ii) necessary to protect human, animal, or plant life or health; or
(iii) related to the conservation of living or non-living exhaustible natural resources.
(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.
(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods

necessary to qualify for preferential tariffs or preferential quotas.
4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(4) For greater certainty, the references to "the TRIPS Agreement" in paragraph 3(b)(i) include any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

(5) The Parties recognize that a patent does not necessarily confer market power.

Article 10.10. Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.11. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.12. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:
(a) does not maintain diplomatic relations with the non-Party; or
(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.13. Non-conforming Measures

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex I,
(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
(iii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10-8 10.10.
2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 15.1.6 (General Provisions) as specifically provided in that Article. 5. Articles 10.3, 10.4, and 10.10 do not apply to: (a) procurement; or (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and

insurance.

Article 10.14. Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Section B. Investor-State Dispute Settlement

Article 10.15. Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation.

Article 10.16. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:
(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim
(i) that the respondent has breached
(A) an obligation under Section A,
(B) an investment authorization, or
(C) an investment agreement; and
(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and
(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim
(i) that the respondent has breached
(A) an obligation under Section A,
(B) an investment authorization, or
(C) an investment agreement; and
(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:
(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
(c) the legal and factual basis for each claim; and
(d) the relief sought and the approximate amount of damages claimed.
3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:
(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;
(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention; or
(c) under the UNCITRAL Arbitration Rules.
4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):
(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or (c)

referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent. A claim asserted for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.
5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.
6. The claimant shall provide with the notice of arbitration:
(a) the name of the arbitrator that the claimant appoints; or
(b) the claimant's written consent for the Secretary-General to appoint such arbitrator.

Article 10.17. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:
(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
(b) Article II of the New York Convention for an "agreement in writing;" and
(c) Article I of the Inter-American Convention for an "agreement."

Article 10.18. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.
2. No claim may be submitted to arbitration under this Section unless:
(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
(b) the notice of arbitration is accompanied,
(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver, and
(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.
3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.
4. No claim may be submitted to arbitration:
(a) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)(i)(B), or
(b) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C),
if the claimant (for claims brought under Article 10.16.1(a)) or the claimant or the enterprise (for claims brought under Article 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, for adjudication or resolution.

Article 10.19. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
(c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.
4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.
(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).
(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.
5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.
6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.
7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.
8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.
9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such 10-14 10-15 comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.
(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been

made available pursuant to paragraph 10 or Annex 10-D.
10. If a separate multilateral agreement enters into force as between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force as between the Parties.

Article 10.21. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:
(a) the notice of intent;
(b) the notice of arbitration;
(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;
(d) minutes or transcripts of hearings of the tribunal, where available; and
(e) orders, awards, and decisions of the tribunal.
2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.5 (Disclosure of Information).
4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:
(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;
(c) A disputing party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1; and
(d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or
(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.
5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.22. Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply:
(a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or
(b) if the rules of law have not been specified or otherwise agreed:
(i) the law of the respondent, including its rules on the conflict of laws; (6) and
(ii) such rules of international law as may be applicable.
3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 19.1.3(c) (The Free Trade Commission) shall be binding on a tribunal established under this Section, and any decision or award issued by the tribunal must be consistent with that decision.

(6) The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case

Article 10.23. Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 19.1.3(c) (The Free Trade Commission) to the tribunal within 60 days of delivery of the request.
2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.24. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.25. Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;
(b) the nature of the order sought; and
(c) the grounds on which the order is sought.
3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.
4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:
(a) one arbitrator appointed by agreement of the claimants;
(b) one arbitrator appointed by the respondent; and
(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.
5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.
6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
(a) assume jurisdiction over, and hear and determine together, all or part of the claims;
(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:
(a) the name and address of the claimant;
(b) the nature of the order sought; and 10-19 (c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.
8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.
9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26. Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:
(a) monetary damages and any applicable interest;
(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):
(a) an award of restitution of property shall provide that restitution be made to the enterprise;
(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
3. A tribunal is not authorized to award punitive damages.
4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
6. A disputing party may not seek enforcement of a final award until:
(a) in the case of a final award made under the ICSID Convention,
(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
(ii) revision or annulment proceedings have been completed; and
(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules,
(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.
7. Each Party shall provide for the enforcement of an award in its territory.
8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 20.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:
(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
(b) in accordance with Article 20.12 (Initial Report), a recommendation that the respondent abide by or comply with the final award.
9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8. 10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 10.27. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-E.

Section C. Additional Provisions and Definitions

Article 10.28. Additional Provisions

Annex 10-F sets out additional provisions relating to the Panama Canal Authority.

Article 10.29. Definitions

For purposes of this Chapter:
Centre means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;
claimant means an investor of a Party that is a party to an investment dispute with the other Party;
disputing parties means the claimant and the respondent;
disputing party means either the claimant or the respondent;
enterprise means an enterprise as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;
enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;
freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;
ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceeding by the Secretariat of the International Centre for Settlement of Investment Disputes;
ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;
Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;
investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
(a) an enterprise;
(b) shares, stock, and other forms of equity participation in an enterprise;
(c) bonds, debentures, other debt instruments, and loans; (7) (8)
(d) futures, options, and other derivatives;
(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
(f) intellectual property rights;
(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (9) (10)
(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;
investment agreement means a written agreement (11) that takes effect on or after the date of entry into force of this Agreement between a national authority (12) of a Party and a covered investment or an investor of the other Party that grants the covered investment or investor rights:
(a) with respect to natural resources or other assets that a national authority controls; and
(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself;
investment authorization (13) means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party; (14)
investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;
investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;
national means a natural person who has the nationality of a Party according to Annex 2.1 (Country-Specific Definitions);
New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;
non-disputing Party means the Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID;

tribunal means an arbitration tribunal established under Article 10.19 or 10.25; and

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

(7) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

(8) For purposes of this Agreement, claims to payment that are immediately due and result from the sale of goods or services are not investments.

(9) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(10) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(11) "Written agreement" refers to an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(12) For purposes of this definition, "national authority" means an authority at the central level of government.

(13) For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

(14) The Parties recognize that neither Party has a foreign investment authority, as of the date of signature of this Agreement.

Annex 10-A. Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens

Annex 10-B. Expropriation

The Parties confirm their shared understanding that:

1. Article 10.7.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

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

3. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-bycase, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Annex 10-C. Submission of a Claim to Arbitration

1. An investor of the United States may not submit to arbitration under Section B a claim that Panama has breached an obligation under Section A either:

(a) on its own behalf under Article 10.16.1(a), or

(b) on behalf of an enterprise of Panama that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b), if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Panama.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Panama, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

Annex 10-D. Possibility of a Bilateral Appellate Mechanism

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 10.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 10-E.

Service of Documents on a Party Under Section B

Panama

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

Chief of International Trade Negotiations

Ministry of Commerce and Industry

Panama P.O. Box 0815-01119

Panama, Republic of Panama

United States

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

Executive Director (L/EX)

Office of the Legal Adviser

Department of State

Washington, D.C. 20520

United States of America

10-F. Panama Canal Authority

1. For greater certainty, nothing in this Chapter or Chapter Eleven (Cross-Border Trade in Services) shall be construed to derogate from Panama's right to appoint the Panama Canal Authority as the entity exclusively responsible for the use, administration, functioning, conservation, maintenance, modernization, and related activities of the Panama Canal, as provided under Panama's 1972 Constitution, which states:

"a. The Panama Canal is the inalienable patrimony of the Panamanian nation; it shall remain open to the peaceful and uninterrupted transit of the vessels of all nations, and its use is subject to the requirements and conditions established by the Constitution, the law, and its administration."

"b. An autonomous juridical person is created under Public Law, which is called the Panama Canal Authority, which is exclusively responsible for the administration, functioning, conservation, maintenance, and modernization of the Panama Canal and related activities, subject to constitutional and legal norms that are in effect, in order for the Canal to function in a secure, continuous, efficient, and profitable manner. It shall have its own property and the right to administer it."

"c. The Panama Canal Authority has the responsibility for the administration, maintenance, use, and conservation of the water resources of the Panama Canal basin, consisting of the water of its lakes and tributary currents, in coordination with the state entities that the law designates. Construction plans, use of waters, expansion, development of ports and of any other work or construction on the shores of the Panama Canal requires prior approval of the Authority."

2. For greater certainty, a tribunal established under Section B may not order attachment or enjoin the application of a measure that has been adopted or maintained by the Panama Canal Authority in pursuance of the responsibilities described in paragraph 1, and is alleged to constitute a breach referred to in Article 10.16.

3. (a) No claim arising from acts of the Panama Canal Authority and alleging that Panama has breached an investment agreement may be submitted under Section B unless the claim has first been submitted to the Panama Canal Authority and three months have elapsed from the date of such submission.

(b) For greater certainty, the claim referred to in subparagraph (a) may be submitted against Panama under Section B at the expiration of the three-month period referred to in that subparagraph regardless of whether the Panama Canal Authority has issued a decision regarding the claim.

(c) The submission to the Panama Canal Authority of the claim referred to in subparagraph (a) shall not be construed as submission of the claim to an administrative tribunal or a binding dispute settlement procedure within the meaning of Article 10.18.4.

4. (a) The Panama Canal Authority may grant, pursuant to Acuerdo No. 82 of August 17, 2004, as amended, compatibility permits or authorizations for the use of, or for activities, projects, works, or construction undertaken in, the compatibility area (15) or in the waters and shores of the Canal.

(b) The Panama Canal Authority may revoke or modify, pursuant to Acuerdo No. 82 of August 17, 2004, as amended, such compatibility permits or authorizations if it determines that: (i) such use, activities, projects, works, or construction may endanger the efficient operation of the Panama Canal; (ii) the compatibility areas are necessary for the functioning, protection, modernization, or expansion of the Panama Canal; (iii) the use, activity, project, works, or construction is no longer compatible with the functioning of the Panama Canal; or (iv) the terms and conditions of the relevant permit or authorization have not been satisfied. The Panama Canal Authority may also revoke compatibility permits or authorizations for any other reason provided by Panamanian law.

(c) Revocations and other actions that the Panama Canal Authority takes with respect to compatibility permits and authorizations must be otherwise consistent with this Agreement.

(15) The compatibility area is that area designated for the functioning, protection, modernization, or expansion of the Panama Canal and for other uses compatible with these functions that are identified in Annex A of Law 19 of 1997 and Annex III of Law 21 of 1997.

Chapter Eleven . Cross-Border Trade In Services

Article 11.1. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale, and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

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

2. For purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:

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

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

3. Articles 11.4, 11.7, and 11.8 also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.29 (Definitions) or a covered investment.(1)

4. This Chapter does not apply to:

(a) financial services, as defined in Article 12.20 (Definitions), except as provided in paragraph 3;

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

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

(ii) specialty air services;

(c) procurement; or

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

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

6. This Chapter does not apply to services supplied in the exercise of governmental authority. A "service supplied in the exercise of governmental authority" means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

7. Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry.

(1) The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

Article 11. 2. National Treatment

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

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

Article 11.3. Most-Favored-Nation Treatment

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

Article 11.4. Market Access

Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, (2)

or

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

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(2) This clause does not cover measures of a Party that limit inputs for the supply of services

Article 11.5 . Local Presence

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

Article 11.6. Non-Conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, and 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II

Article 11.7 . Transparency In Developing and Applying Regulations (3)

Further to Chapter Eighteen (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter;

(b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including on request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(c) to the extent possible, each Party shall allow a reasonable time between publication of final regulations and their effective date.

(3) For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

Article 11.6. Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect for each Party, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties will coordinate on such negotiations as appropriate.

Article 11.9 . Mutual Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in the other Party's territory should be recognized.

4. Neither Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.9 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

Article 11.10. Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

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

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 11.11 . Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of the other Party if the enterprise has no substantial business activities in the territory of the other Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 11.12 . Specific Commitments

1. Express Delivery Services:

(a) The Parties affirm that measures affecting express delivery services are subject to this Agreement.

(b) For purposes of this Agreement, express delivery services means the collection, transport, and delivery, of documents, printed matter, parcels, goods, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services. (4)

(c) The Parties express their desire to maintain at least the level of market openness for express delivery services they provided on the date this Agreement is signed.

(d) Panama may not adopt or maintain any restriction on express delivery services that is not in existence on the date this Agreement is signed. Panama confirms that it does not intend to direct revenues from its postal monopoly to benefit express delivery services. Under title 39 of the United States Code, an independent U.S. government agency determines whether U.S. postal rates meet the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the U.S. Postal Service reasonably assignable to such class or type.

(e) Each Party shall ensure that, where its monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Party's obligations under Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2, 11.3, or 11.4. The Parties also reaffirm their obligations under Article VIII of the GATS. (5)

(f) Four years after the date of entry into force of this Agreement, Panama shall apply to publicly owned and privately owned suppliers, on a non-discriminatory basis, measures taken pursuant to Articles 8 and 9 of Decreto Ejecutivo No. 30 de 8 de febrero de 1991 por el cual se dictan medidas relacionadas con la recepción, transporte, despacho y entrega extrapostal internacional de envíos de correspondencia urgente (correo paralelo) y se deroga el Decreto No. 86 del 4 de diciembre de 1989 that impose fees on, or set a minimum price for, the supply of express delivery services.

(4) For greater certainty, for the United States, express delivery services do not include delivery of letters subject to the Private Express Statutes

(18 U.S.C. § 1693 et seq., 39 U.S.C. § 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

(5) For greater certainty, the Parties reaffirm that nothing in this Article is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

Article 11.13 . Additional Provisions

Annex 10-F (Panama Canal Authority) sets out additional provisions relating to the Panama Canal Authority.

Article 11.14. Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other issues of mutual interest.

Article 11.15 . Definitions

For purposes of this Chapter:

cross-border trade in services or cross-border supply of services means the supply of a service:

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

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

(c) by a national of a Party in the territory of the other Party; but does not include the supply of a service in the territory of a Party by an investor of the other Party as defined in Article 10.29 (Definitions) or a covered investment;

enterprise means an "enterprise" as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the laws of that Party, and a branch located in the territory of that Party and carrying out business activities there;

professional services means services, the provision of which requires specialized postsecondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; (6)

and

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(6) The Parties understand that for purposes of Articles 11.2 and 11.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of the GATS.

Chapter Twelve . Financial Services

Article 12.1 . Scope and Coverage

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.12 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirements), as incorporated into this Chapter.

(c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply to the extent a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

Article 12.2 . National Treatment

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

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

3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3 . Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4. Market Access for Financial Institutions

Neither Party may adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

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

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

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

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

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.5 . Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, crossborder financial service suppliers of the other Party to supply the services specified in Annex 12.5.1.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 12.6 . New Financial Services (1)

Each Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

(1) The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to the other Party to request it to consider authorizing the supply of a financial service that is not supplied in the territories of the Parties. The application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

Article 12.7. Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.8 . Senior Management and Boards of Directors

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as

senior managerial or other essential personnel.

2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.9 . Non-Conforming Measures

1. Articles 12.2 through 12.5 and 12.8 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in its Schedule to Annex III,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.8. (2)

2. Annex 12.9.2 sets out certain specific commitments by each Party.

3. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in Section B of its Schedule to Annex III.

4. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.4 (Market Access) does not apply shall be treated as a non-conforming measure to which Article 12.2, 12.3, or 12.4, as the case may be, does not apply, to the extent that the measure, sector, subsector, or activity set out in the Schedule is covered by this Chapter.

(2) For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of this Agreement, with Article 12.5.

Article 12.10 . Exceptions

1. Notwithstanding any other provision of this Chapter or Chapter Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (3) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this

Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

(3) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

Article 12.11 . Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 18.2.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on the proposed regulations.

3. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

Article 12.12 . Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into its territory, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

Article 12.13 . Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party

established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities

Article 12.14 . Domestic Regulation

Except with respect to non-conforming measures listed in its Schedule to Annex III, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

Article 12.15 . Expedited Availability of Insurance Services

1. The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

2. Annex 12.15.2 sets out certain specific commitments by each Party relating to the subject matter of paragraph 1.

Article 12.16. Financial Services Committee

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 12.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17. Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.18 . Dispute Settlement

1. Section A of Chapter Twenty (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain a roster of up to eight individuals who are willing and able to serve as financial services panelists. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to two individuals who are not nationals of either Party. The roster members shall be appointed by mutual agreement of the Parties and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

3. Financial services roster members, as well as financial services panelists, shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

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

(c) be independent of, and not be affiliated with or take instructions from, a Party; and

(d) comply with a code of conduct to be established by the Commission.

4. When a Party claims that a dispute arises under this Chapter, Article 20.9 (Panel Selection) shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 20.8 (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

5. Notwithstanding Article 20.15 (Non-Implementation – Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits

only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.19 . Investment Disputes In Financial Services

1. Where an investor of a Party submits a claim to arbitration under Section B of Chapter Ten (Investment) against the other Party and the respondent invokes Article 12.10, as a defense, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 20.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within ten days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

5. For purposes of this Article, tribunal means a tribunal established under Article 10.19 (Selection of Arbitrators).

Article 12.20 . Definitions

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;
cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

(a) from the territory of one Party into the territory of the other Party,

(b) in the territory of one Party by a person of that Party to a person of the other Party, or

(c) by a national of one Party in the territory of the other Party, but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

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

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

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature.
Financial services include the following activities:

Insurance and insurance-related services

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

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

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

(d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services. Banking and other financial services (excluding insurance)

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

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

(g) Financial leasing;

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

(i) Guarantees and commitments;

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

(i) money market instruments (including checks, bills, and certificates of deposits);

(ii) foreign exchange;

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

(iv) exchange rate and interest rate instruments, including products such as swaps and 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, and advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 10.29 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment; for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for purposes of Chapter 10 (Investment) if such loan or debt instrument meets the criteria for investments set out in Article 10.29 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 2.1 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

Chapter Thirteen . Telecommunications

Article 13.1 . Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;

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

(c) other measures relating to public telecommunications networks or services; and

(d) measures adopted or maintained by a Party relating to the supply of information services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally;

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

Article 13.2 . Access to and Use of Public Telecommunications Services

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;

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

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of subscribers to public telecommunications services, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

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

(b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party’s national law or regulation.

Article 13.3 . Obligations Relating to Suppliers of Public Telecommunications Services (1)

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing

those services.

(c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications suppliers to file their interconnection

agreements.

Resale

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.

Dialing Parity

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of the other Party, and afford suppliers of public telecommunications services of the other Party nondiscriminatory access to telephone numbers and related services with no unreasonable dialing delays.

(1) This Article is subject to Annex 13.3. Paragraphs 2 through 4 of Article 13.3 do not apply with respect to suppliers of commercial mobile services. Nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

Article 13.4 . Additional Obligations Relating to Major Suppliers of Public Telecommunications Services (2)

Treatment by Major Suppliers

1. Each Party shall ensure that any major supplier in its territory accord suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

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

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

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

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

and

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

Resale

3. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services. (3)

Unbundling of Network Elements

4. (a) Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

(b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law and regulations.

Interconnection

5. (a) General Terms and Conditions

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

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

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

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

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

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

(b) Options for Interconnecting with Major Suppliers
Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

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

(ii) the terms and conditions of an interconnection agreement in force; or

(iii) through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

If a major supplier has a reference interconnection offer or other standard interconnection offer, the Party in whose territory the major supplier is located shall require such offer to be made publicly available.

(d) Public Availability of the Procedures for Interconnection Negotiations

(2) This Article is subject to Annex 13.3. Article 13.4 does not apply with respect to commercial mobile services. This Article is without prejudice to any rights or obligations that a Party may have under the GATS, and nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

(3) Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

Article 13.5 . Submarine Cable Systems

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate a submarine cable system as a public telecommunications service.

Article 13.6. Conditions for the Supply of Information Services

1. Neither Party may require an enterprise in its territory that it classifies (4) as a supplier of information services and that supplies such services over facilities that it does not own to:

(a) supply such services to the public generally;

(b) cost-justify its rates for such services;

(c) file a tariff for such services;

(d) interconnect its networks with any particular customer for the supply of such services; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

(4) For purposes of this Article, each Party's telecommunications regulatory body may classify which services in its territory are information services.

Article 13.7 . Independent Regulatory Bodies (5) and Government-Owned Telecommunications Suppliers

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. Neither Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of the other Party on the ground that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

(5) Each Party shall endeavor to ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

Article 13.8. Universal Service

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.9. Licenses and other Authorizations

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures it applies;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

Article 13.10 . Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. For greater certainty, a Party's measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are per se inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1.3 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with the relevant provisions of this Agreement. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

Article 13.11. Enforcement

Each Party shall provide its competent authority with the authority to establish and enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.5.

Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations

Article 13.12 . Resolution of Domestic Telecommunications Disputes

Further to Articles 18.4 (Administrative Proceedings) and 18.5 (Review and Appeal), each Party shall ensure the following: Recourse to Telecommunications Regulatory Bodies

(a) (i) enterprises of the other Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 13.2 through 13.5; (6)

(ii) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body (7) to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

Reconsideration

(b) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision; (8) and

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

(6) For Panama, the regulatory body shall be the Autoridad Nacional de los Servicios Publicos or its successor.

(7) For the United States, this body may be a state regulatory authority.

(8) With respect to Panama, the regulatory body shall issue its determination or decision on a petition for reconsideration within two months of the date on which the petition is filed. During the period of reconsideration, the determination or decision under reconsideration shall be suspended.
With respect to the United States, a petition for reconsideration may not constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless an appropriate authority stays the determination or decision.

Article 13.13. Transparency

Further to Articles 18.2 (Publication) and 18.3 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

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

(i) measures relating to:

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

(B) specifications of technical interfaces;

(C) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;

(D) conditions for attaching terminal or other equipment to the public telecommunications network; and

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

(ii) procedures relating to judicial and other adjudicatory proceedings.

Article 13.14. Flexibility In the Choice of Technologies

Neither Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests. (9)

(9) For greater certainty, nothing in this Chapter shall be construed to prevent a telecommunications regulatory body from requiring the proper license or other authorization to supply each public telecommunications service.

determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority.

Article 13.13 . Transparency

Further to Articles 18.2 (Publication) and 18.3 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

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

(i) measures relating to:

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

(B) specifications of technical interfaces;

(C) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;

(D) conditions for attaching terminal or other equipment to the public telecommunications network; and

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

and

(ii) procedures relating to judicial and other adjudicatory proceedings.

Article 13.14 . Flexibility In the Choice of Technologies

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(9) For greater certainty, nothing in this Chapter shall be construed to prevent a telecommunications regulatory body from requiring the proper license or other authorization to supply each public telecommunications service.

Article 13.15 . Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choice in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers;

and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 13.16 . Relationship to other Chapters

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

Article 13.17 . Definitions

For purposes of this Chapter:

commercial mobile services *means public telecommunications services supplied through mobile wireless means;*

cost-oriented *means based on cost, and may include a reasonable profit, (10) and may involve different cost methodologies for different facilities or services;*

dialing parity *means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;*

end-user *means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;*

enterprise *means an "enterprise" as defined in Article 2.1 (Definitions of General Application),*

and includes a branch of an enterprise;

enterprise of the other Party *means both an enterprise constituted or organized under the law of the other Party and an enterprise owned or controlled by a person of the other Party;*

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

(a) are exclusively or predominantly supplied by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

information service *means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;*

interconnection *means linking with suppliers providing public telecommunications services in order to allow the users of one*

supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits *means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;*

major supplier *means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:*

(a) control over essential facilities; or

(b) use of its position in the market;

network element *means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;*

non-discriminatory *means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;*

number portability *means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between like suppliers of public telecommunications services;*

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

public telecommunications service *means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;*

reference interconnection offer *means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;*

telecommunications *means the transmission and reception of signals by any electromagnetic means, including by photonic means;*

telecommunications regulatory body *means a national body responsible for the regulation oftelecommunications; and*

user *means an end-user or a supplier of public telecommunications services.*

(10) For Panama, cost-oriented shall include a reasonable profit.

Chapter Fourteen . Electronic Commerce

Article 14.1. General

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

Article 14.2 . Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means are subject to the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

Article 14.3. Digital Products

1. Neither Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. Neither Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:

(a) on the basis that

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or a non-Party, or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory. (1)

4. Neither Party may accord less favorable treatment to digital products transmitted electronically:

(a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products transmitted electronically that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non- Party.

5. Paragraphs 3 and 4 do not apply to any non-conforming measure adopted or maintained in accordance with Article 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), or 12.9 (Non-Conforming Measures).

(1) For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

Article 14.4. Transparency

Each Party shall publish or otherwise make available to the public its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 14.5. Cooperation

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

(a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;

(b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;

(c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

(d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and

(e) actively participating in hemispheric and multilateral fora to promote the development of electronic commerce.

Article 14.6. Definitions

For purposes of this Chapter:

carrier medium *means any physical object designed principally for use in storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, or a magnetic tape;*

digital products *means computer programs, text, video, images, sound recordings, and other products that are digitally encoded; (2)*

electronic *means means employing computer processing; and*

electronic transmission or transmitted electronically *means the transfer of digital products*

using *any electromagnetic or photonic means.*

(2) For greater certainty, digital products do not include digitized representations of financial instruments.

Chapter Fifteen. Intellectual Property Rights

Article 15.1. General Provisions

1. Each Party shall, at a minimum, give effect to this Chapter. A Party may, but shall not be obliged to, implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement does not contravene this Chapter.

2. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement: (1)

(a) the WIPO Copyright Treaty (1996);

(b) the WIPO Performances and Phonograms Treaty (1996);

(c) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);

(d) the Patent Cooperation Treaty (1970), as amended in 1979; and

(e) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980.

3. Each Party shall ratify or accede to:

(a) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention 1991) by January 1, 2010; (2) and

(b) the Trademark Law Treaty (1994) by January 1, 2011.

4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements:

(a) the Patent Law Treaty (2000);

(b) the Hague Agreement Concerning the International Registration of Industrial

Designs (1999); and

(c) the Protocol Relating to the Madrid Agreement Concerning the International

Registration of Marks (1989).

5. Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the TRIPS Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) and to which they are party.

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (3) of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection (4) and enjoyment of such intellectual property rights and any benefits derived from such rights.

7. A Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including any procedure requiring a national of the other Party to designate for service of process an address in its territory or to appoint an agent in its

territory, provided that such derogation:

(a) is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraph 6 does not apply to procedures provided in multilateral agreements to which the Parties are party concluded under the auspices of WIPO in relation to the acquisition or maintenance of intellectual property rights.

9. Except as it provides otherwise, this Chapter gives rise to obligations in respect of all subject matter existing on the date of entry into force of this Agreement that is protected on that date in the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

10. Except as otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.

11. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

12. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights shall be in writing and shall be published, (5) or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent.

13. Nothing in this Chapter shall be construed to prevent a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set out in this Chapter, provided that such measures are consistent with this Chapter.

(1) For greater certainty, nothing in this paragraph shall be construed to prevent Panama from availing itself of the transition periods set forth in Article 15.13.2(f), (g), (h), and (m) with respect to the transition period for Article 15.11.14.

(2) The Parties recognize that the UPOV Convention 1991 contains exceptions to the breeder's right, including for acts done privately and for non-commercial purposes, such as private and non-commercial acts of farmers. Further, the Parties recognize that the UPOV Convention 1991 provides for restrictions to the exercise of a breeder's right for reasons of public interest, provided that the Parties take all measures necessary to ensure that the breeder receives equitable remuneration. The Parties also understand that each Party may avail itself of these exceptions and restrictions. Finally, the Parties understand that there is no conflict between the UPOV Convention 1991 and a Party's ability to protect and conserve its genetic resources.

(3) For purposes of Articles 15.1.6, 15.1.7, 15.4.2, and 15.7.1, a national of a Party shall also mean, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.1.2 through 15.1.4 and the TRIPS Agreement.

(4) For purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of this paragraph, "protection" shall also include the prohibition on circumvention of effective technological measures set out in Article 15.5.7 and the rights and obligations concerning rights management information set out in Article 15.5.8.

(5) A Party may satisfy the requirement for publication by making the measure available to the public on the Internet.

Article 15.2. Trademarks

1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications and scent marks. A geographical indication is capable of constituting a mark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating6 in the territory

of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good or service is essentially attributable to its geographical origin.

2. In view of the obligations of Article 20 of the TRIPS Agreement, each Party shall ensure that measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, inter alia, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such goods.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

4. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

5. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) (Paris Convention) shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (7) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

6. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

7. Each Party shall provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks, and work to provide, to the maximum degree practical, a publicly available electronic database – including an on-line database – of trademark applications and registrations.

8. (a) Each Party shall provide that each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their common names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979), as revised and amended (Nice Classification).

(b) Each Party shall provide that goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

9. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

10. Neither Party may require recordal of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes. (8)

(7) In determining whether a trademark is well known, the reputation of the trademark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

(8) A Party may establish a means to allow licensees to record licenses for the purpose of providing notice to the public as to the existence of the license. However, neither Party may make notice to the public a requirement for asserting any rights under the license.

Article 15.3. Geographical Indications

Definition

1. For purposes of this Article, geographical indications are indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication.

Procedures with Respect to Geographical Indications

2. Each Party shall provide the legal means to identify (9) and protect geographical indications of the other Party that meet the criteria of paragraph 1. Each Party shall provide the means for persons of the other Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications and petitions from persons of the other Party without the requirement for intercession by that Party on behalf of its persons.

3. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

4. Each Party shall make its regulations governing filing of such applications or petitions, as the case may be, readily available to the public.

5. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.

6. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. Each Party shall make available contact information sufficient to allow (a) the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and (b) applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions.

Relationship between Trademarks and Geographical Indications

7. Each Party shall ensure that grounds for refusing protection or recognition of a geographical indication include the following:

(a) the geographical indication is likely to be confusingly similar to a trademark that is the subject of a good-faith pending application or registration; and

(b) the geographical indication is likely to be confusingly similar to a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law. (10)

(9) For purposes of this paragraph, legal means to identify means a system that permits applicants to provide information on the quality, reputation, or other characteristics of the asserted geographical indication.

(10) For purposes of this paragraph, the Parties understand that each Party has already established grounds for refusing protection of a trademark under its law, including that (a) the trademark is likely to be confusingly similar to a geographical indication that is the subject of a registration; and (b) the trademark is likely to be confusingly similar to a pre-existing geographical indication, the rights to which have been acquired in accordance with the Party's law.

Article 15.4. Domain Names on the Internet

1. In order to address trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provides an appropriate procedure for the settlement of disputes based on the principles established in the Uniform Domain-Name Dispute- Resolution Policy.

2. Each Party shall require that the management of its ccTLD provides on-line public access to a reliable and accurate database of contact information for domain-name registrants. In determining the appropriate contact information, the management of a Party's ccTLD may give due regard to the Party's laws protecting the privacy of its nationals.

Article 15.5. Obligations Pertaining to Copyright and Related Rights

1. Each Party shall provide that authors, performers, and producers of phonograms (11) have the right (12) to authorize or prohibit all reproductions of their works, performances, or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).(13)

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize the making available to the public of the original and copies of their works, performances, and phonograms (14) through sale or other transfer of ownership.

3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and of a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or

(ii) failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply the provisions of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to the subject matter, rights, and obligations provided for in this Article and Articles 15.6 and 15.7.

6. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding any economic right in a work, performance, or phonogram may freely and separately transfer such right by contract; and

(b) any person acquiring or holding any such economic right by virtue of a contract, including contracts of employment underlying the creation of works and performances, and production of phonograms, shall be able to exercise such right in that person's own name and enjoy fully the benefits derived from such right.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or

(ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:

(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure; or

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies provided for in Article 15.11.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) In implementing subparagraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).

(c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil cause of action or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights.

(d) Each Party shall confine exceptions to any measures implementing the prohibition in subparagraph (a)(ii) on technology, products, services, or devices that circumvent effective technological measures that control access to, and, in the case of clause (i), that protect any of the exclusive rights of copyright or related rights in, a protected work, performance, or phonogram referred to in subparagraph (a)(ii), to the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance or display of a work, performance, or phonogram, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing

flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate on-line content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii); and

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network.

(e) Each Party shall confine exceptions to any measures implementing the prohibition referred to in subparagraph (a)(i) to the activities listed in subparagraph (d) and the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram, not otherwise available to it, for the sole purpose of making acquisition decisions;

(ii) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the on-line activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; and

(iii) noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that in order for any such exception to remain in effect for more than four years, a Party must conduct a review before the expiration of the four-year period and at intervals of at least every four years thereafter, pursuant to which it is demonstrated in such a proceeding by substantial evidence that there is a continuing actual or likely adverse impact on the particular noninfringing use.

(f) Each Party may provide exceptions to any measures implementing the prohibitions referred to in subparagraph (a) for lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, essential security, or similar governmental purposes.

(g) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

8. In order to provide adequate legal protection and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who, without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies provided for in Article 15.11.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) Each Party shall confine exceptions to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, national defense, essential security, or similar governmental purposes.

(c) Rights management information means:

(i) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram, or the owner of any right in the work, performance, or phonogram; or

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public. Nothing in this paragraph shall obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. In order to confirm that all agencies at the central level of government use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or decrees to actively regulate the acquisition and management of software for such use. These measures may take the form of procedures such as preparing and maintaining inventories of software on agency computers and inventories of software licenses.

10. (a) With respect to Articles 15.5, 15.6, and 15.7, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

(b) Notwithstanding subparagraph (a) and Article 15.7.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

(11) References in this Chapter to "authors, performers, and producers of phonograms" include any successors in interest.

(12) With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize means an exclusive right.

(13) The Parties understand that the reproduction right as set out in this paragraph and in Article 9 of the Berne Convention for the Protection of Literary and Artistic Works (1971) (Berne Convention) and the exceptions permitted under the Berne Convention and Article 15.5.10(a) fully apply in the digital environment, in particular to the use of works in digital form.

(14) With respect to copyright and related rights in this Chapter, a "performance" refers to a performance fixed in a phonogram, unless otherwise specified.

Article 15.6. Obligations Pertaining Specifically to Copyright

Without prejudice to Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, directly or indirectly, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Article 15.7. Obligations Pertaining Specifically to Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of the other Party and to performances or phonograms first published or fixed in the territory of a Party. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication. (15)

2. Each Party shall provide to performers the right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 15.5.10, the application of this right to traditional free over-the-air noninteractive broadcasting, and exceptions or limitations to this right for such broadcasting, shall be a matter of domestic law.

(c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 15.5.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

4. Neither Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

5. For purposes of this Article and Article 15.5, the following definitions apply with respect to performers and producers of phonograms:

(a) performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(c) fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(15) For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

Article 15.8. Protection of Encrypted Program-Carrying Satellite Signals

1. Each Party shall make it a criminal offense:

(a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive and further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any

person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

Article 15.9. Patents

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided

that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms

"inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful," respectively.

2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, any Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make such patent protection available. Any Party that provides patent protection for plants or animals on or after the date of entry into force of this Agreement shall maintain such protection.

3. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Without prejudice to Article 5.A(3) of the Paris Convention, each Party shall provide that a patent may be revoked or cancelled only on grounds that would have justified a refusal to grant the patent. However, a Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking, canceling, or holding a patent unenforceable.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall cooperate and provide assistance to one another to achieve these objectives.

(b) Each Party, at the request of the patent owner, shall adjust the term of a patent, other than a patent for a pharmaceutical product, to compensate for unreasonable delays that occur in granting the patent. Each Party, at the request of the patent owner, may adjust the term of a patent for a pharmaceutical product to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(c) With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party.

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant, and (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

8. Each Party shall provide patent applicants with at least one opportunity to submit amendments, corrections, and observations in connection with their applications.

9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

10. Each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

11. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility.

Article 15.10. Measures Related to Certain Regulated Products

Agricultural Chemical Products

1. (a) If a Party requires, as a condition of approving the marketing of a new agricultural chemical product, the submission of undisclosed data concerning safety or efficacy, the Party shall not permit third persons, without the consent of the person who provided the information, to market a product on the basis of (1) the information, or (2) the approval granted to the person who submitted the information for at least ten years from the date of approval in the Party. (16)

(b) If a Party permits, as a condition of approving the marketing of a new agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously obtained such approval in the other territory, to obtain authorization or to market a product on the basis of (1) evidence of prior marketing approval in the other territory, or (2) information concerning safety or efficacy that was previously submitted to obtain marketing approval in the other territory, for at least ten years from the date approval was granted in the Party's territory to the person who received approval in the other territory. In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.

(c) For the purposes of this Article, a new agricultural product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural product.

(d) For purposes of this paragraph, each Party shall protect such undisclosed information against disclosure except where necessary to protect the public, and neither Party may consider information accessible within the public domain as undisclosed data. Notwithstanding the foregoing, if any undisclosed information concerning safety and efficacy submitted to a Party, or an entity acting on behalf of a Party, for purposes of obtaining marketing approval is disclosed by such entity, the Party is still required to protect such information from unfair commercial use in the manner set forth in this Article.

Pharmaceutical Products

2. (a) If a Party requires, as a condition for approving the marketing of a pharmaceutical product that utilizes a new chemical entity, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

(b) Each Party shall provide that for data subject to subparagraph (a) that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean five years from the date on which the Party granted approval to the person that produced the data for approval to market expenditures in producing them. (17) Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.

(c) Where a Party relies on a marketing approval granted by the other Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

(d) A Party need not apply the provisions of subparagraphs (a), (b), and (c) with respect to a pharmaceutical product that contains a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product.

(e) Notwithstanding subparagraphs (a), (b), and (c), a Party may take measures to

protect public health in accordance with:

(i) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the "Declaration");

(ii) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and

(iii) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

3. Each Party shall provide:

(a) procedures, such as judicial or administrative proceedings, and remedies, such as preliminary injunctions or equivalent effective provisional measures, for the expeditious adjudication of disputes concerning the validity or infringement of a patent with respect to patent claims that cover an approved pharmaceutical product or its approved method of use;

(b) a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical

product during the term of a patent covering the product or its approved method of use; and

(c) sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval in the territory of a Party or in another country, the Party may implement the provisions of paragraph 3 by:

(a) implementing measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the previously approved product or its approved use during the term of that patent, unless by consent or acquiescence of the patent owner; and

(b) providing that the patent owner shall be informed of the request and the identity of any such other person who requests approval to enter the market during the term of a patent identified as claiming the approved product or its approved use; provided that the Party also provides:

(c) an expeditious administrative or judicial procedure in which the person requesting marketing approval can challenge the validity or applicability of the identified patent; and

(d) effective rewards for a successful challenge of the validity or applicability of the patent. (18)

General Provisions

5. Subject to paragraph 2(e), when a product is subject to a system of marketing approval in the territory of a Party pursuant to paragraph 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraph 1 or 2.

(16) Where a Party, on the date it implemented the TRIPS Agreement, had in place a system for protecting agricultural chemical products not involving new chemical entities from unfair commercial use that conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1.

(17) Where a Party, on the date it implemented the TRIPS Agreement, had in place a system for protecting pharmaceutical products not involving new chemical entities from unfair commercial use that conferred a period of protection shorter than that specified in paragraph 2, that Party may retain such system notwithstanding the obligations of paragraph 2.

(18) A Party may comply with clause (d) by providing a period of marketing exclusivity for the first applicant to successfully challenge the validity or applicability of the patent.

Article 15.11. Enforcement of Intellectual Property Rights

General Obligations

1. Each Party understands that procedures and remedies required under this Article for enforcement of intellectual property rights are established in accordance with:

(a) the principles of due process that each Party recognizes; and

(b) the foundations of its own legal system.

2. This Article does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or

(b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general.

The Parties understand that the decisions that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.

3. Each Party shall provide that final judicial decisions or administrative rulings of general applicability pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall provide that such decisions or rulings shall be published, (19) or where such publication is not practicable, otherwise made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

4. Each Party shall publicize information that it may collect on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal system, including any statistical information.

5. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:

(a) the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram; and

(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies

6. Each Party shall make available to right holders (20) civil judicial procedures concerning the enforcement of any intellectual property right.

7. Each Party shall provide that:

(a) in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and are not taken into account in computing the amount of the damages referred to in clause (i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, the value of the infringed-upon good or service based on the suggested retail price or other legitimate measure of value that the right holder presents.

8. In civil judicial proceedings, each Party shall, at least with respect to civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, establish or maintain pre-established damages as an alternative to actual damages. Such pre- established damages shall be set out in domestic law and determined by the judicial authorities in an amount sufficient to compensate the right holder for the harm caused by the infringement and constitute a deterrent to future infringements.

9. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, that the prevailing party shall be awarded payment of court costs or fees and reasonable attorney's fees by the losing party. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party be awarded payment of reasonable attorney's fees by the losing party.

10. In civil judicial proceedings concerning copyright or related right infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

11. Each Party shall provide that:

(a) its judicial authorities shall have the authority to order, at their discretion, the destruction of the goods that have been found to be pirated or counterfeit;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize

the risks of further infringements. In considering requests for such destruction, the Party's judicial authorities may take into account, inter alia, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests;

(c) the charitable donation of counterfeit trademark goods and goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce.

12. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person involved in any aspect of the infringement and regarding the means of production or distribution channel for the infringing goods or services, including the identification of third persons that are involved in their production and distribution and their distribution channels, and to provide this information to the right holder. Each Party shall provide that its judicial authorities shall have the authority to impose sanctions, in appropriate cases, on a party to a proceeding that fails to abide by valid orders issued by such authorities.

13. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those provided for in this Chapter.

14. Each Party shall provide for civil remedies against the acts described in Article 15.5.7 and 15.5.8. Available civil remedies shall include at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) actual damages (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or pre-established damages as provided in paragraph 8;

(c) payment to the prevailing right holder, at the conclusion of civil judicial proceedings, of court costs and fees and reasonable attorney's fees by the party engaged in the prohibited conduct; and

(d) destruction of devices and products found to be involved in the prohibited activity, at the discretion of the judicial authorities, as provided in subparagraphs (a) and (b) of paragraph 11.

Neither Party may make damages available against a nonprofit library, archives, educational institution, or public broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

15. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, inter alia, to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods or to prevent their exportation.

16. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties bear the costs of such experts, the Party should seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

Provisional Measures

17. Each Party shall act on requests for relief inaudita altera parte and execute such requests expeditiously, in accordance with its rules of judicial procedure.

18. Each Party shall provide that its judicial authorities shall have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

19. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

Special Requirements Related to Border Measures

20. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend the release of

suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods (21) into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

21. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures for suspension to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party shall provide that such security may take a form of an instrument issued by a financial services provider to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

23. Each Party shall provide that its competent authorities may initiate border measures ex officio, with respect to imported, exported, or in-transit merchandise suspected of infringing an intellectual property right, without the need for a formal complaint from a private party or right holder.

24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by its competent authorities shall be destroyed, pursuant as appropriate to judicial order, unless the right holder consents to an alternate disposition, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

25. Each Party shall provide that where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that unreasonably deters recourse to such measures.

Criminal Procedures and Remedies

26. (a) Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes significant willful infringements of copyright or related rights, for purposes of commercial advantage or private financial gain, as well as willful infringements that have no direct or indirect motivation of financial gain, provided that there is more than a de minimis financial harm. Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities and provide for criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce. (22)

(b) Specifically, each Party shall provide:

(i) remedies that include sentences of imprisonment or monetary fines, or both, sufficient to provide a deterrent to future acts of infringement. Each Party shall establish policies or guidelines that encourage penalties to be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements;

(ii) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order;

(iii) that its judicial authorities shall have the authority to order, among other measures, (1) the forfeiture of any assets traceable to the infringing activity, (2) the forfeiture and destruction of all counterfeit or pirated goods, without compensation of any kind to the defendant, in order to prevent the re-entry of counterfeit and pirated goods into channels of commerce, and (3) with respect to willful copyright or related rights piracy, the forfeiture and destruction of materials and implements that have been used in the creation of the infringing goods; and

(iv) that its authorities may, at least in cases of suspected trademark counterfeiting or copyright piracy, conduct investigations or exercise other enforcement measures ex officio, without the need for a formal complaint by a private party or right holder, at least

for the purpose of preserving evidence or preventing the continuation of the infringing activity.

Limitations on Liability for Service Providers

27. For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright (23) covered under this Chapter, including expeditious remedies to prevent infringements, and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article:

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set out in this subparagraph. (24)

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an on-line location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to the function referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available on-line in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic on-line location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice and an opportunity to appear before the Party's judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for

monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material on-line unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) Service provider means:

(A) for purposes of the function referred to in clause (i)(A), a provider of transmission, routing, or connections for digital on-line communications without modification of their content between or among points specified by the user of material of the user's choosing; and

(B) for purposes of the functions referred to in clause (i)(B) through (D), a provider or operator of facilities for on-line services or network access.

(19) A Party may satisfy the requirement for publication by making the document available to the public on the Internet.

(20) For the purpose of this Article, the term "right holder" shall include federations and associations as well as exclusive licensees and other duly authorized licensees, as appropriate, having the legal standing and authority to assert such rights. The term "licensee" shall include the licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

(21) For purposes of paragraphs 20 through 25:
counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and
pirated copyright goods means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Article 15.12. Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2).

2. The Parties have reached the following understandings regarding this Chapter.

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.

Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Party's application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.

Article 15.13. Final Provisions

1. Except as otherwise provided in paragraph 2 and Article 15.1, each Party shall give effect to this Chapter on the date of entry into force of this Agreement.

2. Panama may delay giving effect to:

(a) Article 15.2.1 for a period of no longer than two years;

(b) Article 15.2.5 for a period of no longer than one year;

(c) Article 15.2.10 for a period of no longer than one year;

(d) Article 15.3.7 for a period of no longer than two years;

(e) Article 15.4 for a period of no longer than 18 months;

(f) Articles 15.5.7(a)(ii), 15.5.7(e), and 15.5.7(f) for a period of no longer than three years;

(g) Article 15.5.8(a)(ii) for a period of no longer than 30 months;

(h) Article 15.8 for a period of no longer than 18 months;

(i) Article 15.5.4 for a period of no longer than six months;

(j) Article 15.5.9 for a period of no longer than one year;

(k) Article 15.9.6 for a period of no longer than one year;

(l) Article 15.10.1(a) for a period of no longer than one year; and

(m) Articles 15.11.8, 15.11.14, 15.11.24, and 15.11.27 for a period of no longer than three years beginning on the date of entry into force of this Agreement.

3. The Parties shall periodically review the implementation and operation of this Chapter and shall have the opportunity to undertake further negotiations to modify any of its provisions, including, as appropriate, consideration of an improvement in a Party's level of economic development.

Chapter Sixteen . Labor

Article 16.1. Statement of Shared Commitment

The Parties reaffirm their obligations as members of the International Labor Organization (ILO).

Article 16.2. Fundamental Labor Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) (ILO Declaration):(1) (2)

(a) freedom of association;

(b) the effective recognition of the right to collective bargaining;

(c) the elimination of all forms of compulsory or forced labor;

(d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and

(e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.

(1) The obligations set out in Article 16.2, as they relate to the ILO, refer only to the ILO Declaration.

(2) To establish a violation of an obligation under Article 16.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

Article 16.3. Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 16.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to bona fide decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 16.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter. (3)

2. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

(3) For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions regarding the allocation of enforcement resources with respect to labor laws other than those relating to fundamental rights enumerated in Article 16.2.1.

Article 16.4. Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's law.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure that such proceedings comply with due process of law.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence, obtained and presented in accordance with its law, in respect of which the parties were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to request review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary closures of workplaces that present a serious and immediate health or safety hazard, as provided in the Party's laws.

7. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available; and

(b) encouraging education of the public regarding its labor laws.

8. For greater certainty, decisions or pending decisions by each Party's tribunals, as well as

related proceedings, shall not be subject to revision or be reopened under this Chapter.

Article 16.5. Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 16.6, and to pursue the labor objectives of this Agreement. Unless the Parties otherwise agree, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Party, and with the public, for purposes of carrying out the work of the Council, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Party and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures. The Council shall develop general guidelines for considering such communications.

4. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee, comprising members of its public, including representatives of its labor and business organizations, to provide views on any issues related to this Chapter.

5. All decisions of the Council shall be taken by mutual agreement. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

6. The Council may prepare reports on matters related to the implementation of this Chapter and shall make any such reports public.

Article 16.6. Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues can play an important role in advancing development in the territory of the Parties and in providing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) (ILO Convention 182), the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 16.6.

2. The Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism and the activities undertaken through that Mechanism:

(a) are consistent with each Party's national programs, development strategies, and priorities;

(b) provide opportunities for public participation in the development and implementation of such objectives and activities; and

(c) take into account each Party's economy, culture, and legal system.

Article 16.7. Cooperative Labor Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 16.5.3.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter.

4. If the Parties fail to resolve the matter pursuant to paragraph 3, either Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of the other Party.

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

7. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

8. In cases where the Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

Article 16.8. Labor Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to ten individuals who are willing and able to serve as panelists in disputes arising under this Chapter. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to four individuals who are not nationals of either Party. Labor roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Labor roster members shall:

(a) have expertise or experience in labor law or its enforcement, international trade, or the resolution of disputes arising under international agreements;

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

(c) be independent of, and not affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under this Chapter, Article 20.9 (Panel Selection) shall apply, except that the panel

shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 16.9. Definitions

For purposes of this Chapter:

labor laws *means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:*

(a) freedom of association;

(b) the effective recognition of the right to collective bargaining;

(c) the elimination of all forms of forced or compulsory labor;

(d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

(e) the elimination of discrimination in respect of employment and occupation; and

(f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and

statutes and regulations *and* ***statutes or regulations*** *means:*

(a) for Panama, laws of its legislative body or regulations promulgated by a competent authority; and

(b) for the United States, acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government and, for purposes of this Chapter, includes the Constitution of the United States.

Chapter Seventeen . Environment

Article 17.1. Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.

Article 17.2. Environmental Agreements

Each Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 17.2 ("covered agreements"). (1) (2)

(1) To establish a violation of Article 17.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

(2) For purposes of Article 17.2: (i) "covered agreements" shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (ii) a Party's "obligations" shall be interpreted to reflect, inter alia, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

Article 17.3. Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b) (i) The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities.

Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party's obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, bona fide exercise of such discretion, or results from a reasonable, articulable, bona fide decision regarding the allocation of such resources.

(ii) The Parties recognize the importance of the covered agreements. Accordingly, where a course of action or inaction relates to laws, regulations, and other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and bona fide.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in its environmental law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement.

4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 17.4. Procedural Matters

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings, in accordance with its law, are available to sanction or remedy violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law and be open to the public except where the administration of justice otherwise requires.

(b) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.

(c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

(i) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(ii) may include criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of activities, and requirements to take remedial action or pay for damage to the environment.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 1.

4. Each Party shall provide persons with a legally recognized interest under its law in a particular matter appropriate and effective access to sanctions or remedies, in accordance with its law, for violations of the Party's environmental laws, or for violations of a legal duty under the Party's law relating to human health or the environment, which may include rights such as:

(a) to sue another person under that Party's jurisdiction for damages under that Party's laws;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;

(c) to request that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction.

5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. For greater certainty, decisions or pending decisions by each Party's tribunals, as well as related proceedings, shall not be subject to revision or be reopened under this Chapter.

Article 17.5. Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 17.4. As appropriate and in accordance with its law, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations;

(ii) voluntary guidelines for environmental performance; or

(iii) sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and indicators used in measuring environmental performance; and

(b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Article 17.6. Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Council.

2. The Council shall meet within the first year after the date of entry into force of this Agreement, and annually thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter and to consider the status of cooperation activities developed under the Agreement Between the Government of the United States of America and the Government of the Republic of Panama on Environmental Cooperation ("ECA"). Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. The Council shall set its own agenda. In setting the agenda, each Party shall seek views from its public concerning possible issues for discussion.

4. In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work, including by engaging in a dialogue with the public on those issues.

5. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the ECA.

6. All decisions of the Council shall be taken by mutual agreement, except as provided in Article 17.9. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

Article 17.7. Opportunities for Public Participation

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.

2. Each Party shall make best efforts to accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.

3. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, to provide views on matters related to the implementation of this Chapter.

4. The Parties shall take into account public comments and recommendations regarding cooperative environmental activities undertaken pursuant to Article 17.10 and the ECA.

Article 17.8. Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate. (3)

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

(a) is in writing in either English or Spanish;

(b) clearly identifies the person making the submission;

(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

(f) is filed by a person of a Party.

3. The Parties recognize that the North American Agreement on Environmental Cooperation ("NAAEC") provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws. (4) In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of Panama who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

(a) the submission is not frivolous and alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

(b) of any other information the Party wishes to submit, such as:

(i) whether the matter was previously the subject of a judicial or administrative proceeding;

(ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; or

(iii) information concerning relevant capacity-building activities under the ECA.

(3) The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or other form of agreement.

(4) Arrangements will be made for the United States to make available in a timely manner to Panama all such submissions, U.S. written responses, and factual records developed in connection with those submissions. Panama may provide comments to the United States about the submissions and at the request of either Party the Council shall discuss such documents.

Article 17.9. Factual Records and Related Cooperation

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

2. The secretariat shall prepare a factual record if the Council, by a vote of either Party, instructs it to do so.

3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the secretariat shall consider any information furnished by a

Party and may consider any relevant technical, scientific, or other information:
(a) that is publicly available;

(b) submitted by interested persons;

(c) submitted by national advisory or consultative committees;
(d) developed by independent experts; or

(e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Each Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The Council may, by a vote of either Party, make the final factual record publicly available, normally within 60 days following its submission.

8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

Article 17.10. Environmental Cooperation

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

2. The Parties are committed to expanding their cooperative relationship, recognizing that cooperation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.

3. The Parties recognize that strengthening their cooperative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services.

4. The Parties have concluded an ECA. The Parties have identified certain environmental cooperation activities that may be included in a work program, as reflected in Annex 17.10 and as set out in the ECA. The Parties also have established an Environmental

Cooperation Commission ("ECC") through the ECA that is responsible for developing a work program that reflects each Party's priorities for cooperative environmental programs, projects, and activities.

5. The Parties also recognize the continuing importance of current and future environmental cooperation activities in other fora.

Article 17.11. Collaborative Environmental Consultations and Panel Procedure

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to a contact point that the other Party has designated for this purpose.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter and information exchanged by the Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. If the matter arises under Article 17.2, or under both that Article and another provision of this Chapter, and involves an issue related to a Party's obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under the relevant agreement, unless the procedure could result in unreasonable delay. (5)

4. If the Parties fail to resolve the matter pursuant to paragraph 3, a Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of the other Party.

5. (a) The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

(b) When the matter arises under Article 17.2, or under both that Article and another provision of this Chapter, and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:

(i) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and

(ii) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

6. If the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission regarding any consultations held on the matter.

7. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first pursuing resolution of the matter in accordance with paragraphs 1 through 5.

8. In a dispute arising under Article 17.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter Twenty (Dispute Settlement) shall in making its findings and determination under Articles 20.12 (Initial Report) and 20.13 (Final Report): (6)

(a) consult fully, through a mechanism that the Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;

(b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement; and

(c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Articles 20.12 (Initial Report) and 20.13 (Final Report). (7)

(5) The Parties understand that for purposes of paragraph 3, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

(6) For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel's ability to seek information and technical guidance from any person or body consistent with Article 20.11 (Role of Experts).

(7) The guidance in subparagraph (c) shall prevail over any other interpretative guidance.

Article 17.12. Environmental Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to ten individuals who are willing and able to serve as panelists in disputes arising under this Chapter. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to four individuals who are not nationals of either Party. Environment roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Environment roster members shall:

(a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade or environmental agreements;

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

(c) be independent of, and not affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under this Chapter, Article 20.9 (Panel

Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 17.13. Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are both party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both party and trade agreements to which they are both party.

2. The Parties may consult, as appropriate, with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements.

3. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade. (8)

(8) For greater certainty, paragraph 3 is without prejudice to multilateral environmental agreements other than covered agreements.

Article 17.14. Definitions

1. For purposes of this Chapter:

environmental law *means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:*

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas, in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

*For greater certainty, **environmental law** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.*

For purposes of the definition of "environmental law," the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part;

***laws, regulations, and all other measures to fulfill its obligations under a covered agreement** means a Party's laws, regulations, and other measures at the central level of government; and*

***statute or regulation** means:*

(a) for Panama, a law promulgated by its legislature or a regulation promulgated pursuant to such a law that is enforceable by the executive branch or regulations issued by the Panama Canal Authority.

(b) for the United States, an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

*2. For purposes of Article 17.7.5, **judicial or administrative proceeding** means:*

(a) a domestic judicial, quasi-judicial, or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and

(b) an international dispute resolution proceeding to which the Party is a party.

Chapter Eighteen. Transparency

Section A. Transparency

Article 18.1. Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

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

Article 18.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 18.3. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

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

Article 18.4. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 18.2 to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 18.5. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 18.6. Definitions

For purposes of this Section:

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

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Section B. Anti-Corruption

Article 18.7. Statement of Principle

The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment.

Article 18.8. Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly

or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption described in paragraph 1.

Article 18.9. Cooperation In International Fora

The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

Article 18.10 . Definitions

For purposes of this Section:

act or refrain from acting in relation to the performance of official duties *includes any use of the official's position, whether or not within the official's authorized competence;*

foreign official *means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;*

public function *means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and*

public official *means any official or employee of a Party at the central level of government, whether appointed or elected.*

Chapter Nineteen. Administration of the Agreement and Trade Capacity Building

Section A. Administration of the Agreement

Article 19.1. The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties, as set out in Annex 19.1, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee the further elaboration of this Agreement;

(c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

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

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

3. The Commission may:

(a) establish and delegate responsibilities to committees and working groups;

(b) modify in fulfillment of the Agreement's objectives:

(i) the Schedules to Annex 3.3 (Tariff Elimination), by accelerating tariff elimination;

(ii) the rules of origin established in Annex 4.1 (Specific Rules of Origin);

(iii) the Common Guidelines referenced in Article 4.21 (Common Guidelines); and

(iv) Annex 9.1 (Government Procurement);

(c) issue interpretations of the provisions of this Agreement;

(d) seek the advice of non-governmental persons or groups; and

(e) take such other action in the exercise of its functions as the Parties may agree.

4. Subject to the completion of its applicable legal procedures, each Party shall give effect to any modification referred to in subparagraph 3(b) within such period as the Parties may agree.

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.

6. The Commission shall convene at least once a year in regular session, unless the Commission otherwise decides. Regular sessions of the Commission shall be chaired successively by each Party.

Article 19.2. Free Trade Agreement Coordinators

1. Each Party shall appoint a free trade agreement coordinator, as set out in Annex 19.2.

2. The coordinators shall work jointly to develop agendas and make other preparations for

Commission meetings and shall follow-up on Commission decisions, as appropriate.

Article 19.3. Administration of Dispute Settlement Proceedings

1. Each Party shall:

(a) designate an office that shall provide administrative assistance to the panels established under Chapter Twenty (Dispute Settlement) and perform such other functions as the Commission may direct; and

(b) notify the Commission of the location of its designated office.

2. Each Party shall be responsible for:

(a) the operation and costs of its designated office; and

(b) the remuneration and payment of expenses of panelists and experts, as set out in Annex 19.3.

Section B. Trade Capacity Building

Article 19.4. Committee on Trade Capacity Building

1. Recognizing that trade capacity building assistance is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalized trade, the Parties hereby establish a Committee on Trade Capacity Building, comprising representatives of each Party.

2. In furtherance of the Parties' ongoing trade capacity building efforts and in order to assist Panama to implement this Agreement

and adjust to liberalized trade, Panama should periodically update and provide to the Committee its national trade capacity building strategy.

3. The Committee shall:

(a) seek the prioritization of trade capacity building projects at the national or regional level, or both;

(b) invite appropriate international donor institutions, private sector entities, and non- governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in Panama's national trade capacity building strategy;

(c) work with other committees or working groups established under this Agreement, including through joint meetings, in support of the development and implementation of trade capacity building projects in accordance with the priorities set out in Panama's national trade capacity building strategy;

(d) monitor and assess progress in implementing trade capacity building projects; and

(e) provide a report annually to the Commission describing the Committee's activities, unless the Committee otherwise decides.

4. During the transition period, the Committee shall meet at least twice a year, unless the

Committee otherwise decides.

5. The Committee may establish terms of reference for the conduct of its work.

6. The Committee may establish ad hoc working groups, which may comprise government or non-government representatives, or both.

7. All decisions of the Committee shall be taken by mutual agreement.

8. The Parties hereby establish a working group on customs administration and trade facilitation, which shall work under and report to the Committee. The initial capacity building priorities of the working group should be related to implementation of Chapter Five (Customs Administration and Trade Facilitation) and Section G of Chapter Three (National Treatment and Market Access for Goods) and any other priority that the Committee establishes.

Section C. Trade Security

Article 19.5. Trade Security

1. The Parties recognize that a firm commitment to a secure international trading environment provides a foundation for robust international trade.

2. In furtherance of the Parties' ongoing cooperation, the Commission shall periodically review progress on trade security matters.

Chapter Twenty . Dispute Settlement

Section A. Dispute Settlement

Article 20.1. Cooperation

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

Article 20.2. Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the

obligations of this Agreement or that the other Party has otherwise failed to carry out its obligations under this Agreement; and

(c) wherever a Party considers that an actual or proposed measure of the other Party causes or would cause nullification or impairment in the sense of Annex 20.2.

Article 20.3. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which the Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Article 20.4. Consultations

1. Either Party may request in writing consultations with the other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. Consultations on matters regarding perishable goods (1) shall commence within 15 days of the date of delivery of the request.

4. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

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. (2)

(1) For greater certainty, the term "perishable goods" means perishable agricultural and fish goods classified in Chapters 1 through 24 of the Harmonized System.

(2) A Party receiving such a request shall strive to accommodate it.

Article 20.5. Commission – Good Offices, Conciliation, and Mediation

1. If the Parties fail to resolve a matter pursuant to Article 20.4 within:

(a) 60 days of delivery of a request for consultations;

(b) 15 days of delivery of a request for consultations in matters regarding perishable goods; or

(c) such other period as they may agree,

either Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 7.8 (Committee on Technical Barriers to Trade), Article 16.7 (Cooperative Labor Consultations), or Article 17.11 (Collaborative Environmental Consultations and Panel Procedure).

3. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

4. Unless it decides otherwise, the Commission shall convene within ten days of delivery of the request and shall endeavor to resolve the dispute promptly. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation, or such other dispute resolution procedures; or

(c) make recommendations, as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

Article 20.6. Request for an Arbitral Panel

1. If the Parties fail to resolve a matter within:

(a) 30 days after the Commission has convened pursuant to Article 20.5;

(b) 30 days after a Party has delivered a request for consultations under Article 20.4 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 20.5.4;

(c) 75 days after a Party has delivered a request for consultations under Article 20.4, if the Commission has not convened pursuant to Article 20.5.4; or

(d) such other period as the Parties may agree,

the Party that requested a meeting of the Commission with regard to the measure or other matter in accordance with Article 20.5 may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

2. An arbitral panel shall be established upon delivery of a request.

3. Unless otherwise agreed by the Parties, the panel shall be established and perform its

functions in a manner consistent with the provisions of this Chapter.

4. An arbitral panel may not be established to review a proposed measure.

Article 20.7. Roster

1. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain a roster of up to 20 individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, the roster shall include up to seven individuals who are nationals of each Party and up to six individuals who are not nationals of either Party. The roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Roster members shall:

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

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

(c) be independent of, and not be affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.

Article 20.8. Qualifications of Panelists

All panelists shall meet the qualifications set out in Article 20.7.2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 20.5.4.

Article 20.9 . Panel Selection

1. The Parties shall apply the following procedures in selecting a panel:

(a) the panel shall comprise three members;

(b) the Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within this period, the chair shall be selected by lot within three days from among the roster members who are not nationals of a Party;

(c) within 15 days of selection of the chair, each Party shall select one panelist;

(d) if a Party fails to select a panelist within this period, the panelist shall be selected by lot within three days from among the roster members who are nationals of that Party; and

(e) each Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.

2. Panelists shall normally be selected from the roster. A Party may exercise a peremptory

challenge against any individual not on the roster who is proposed as a panelist by the other Party within 15 days after the individual has been proposed.

3. If a Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 20.10. Rules of Procedure

1. The Commission shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure:

(a) a right to at least one hearing before the panel, which, subject to subparagraph (e), shall be open to the public;

(b) an opportunity for each Party to provide initial and rebuttal written submissions;

(c) that each Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (e);

(d) that the panel will consider requests from non-governmental entities in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties; and

(e) the protection of confidential information.

2. Unless with the Model Rules of Procedure.

the Parties otherwise agree, the panel shall conduct its proceedings in accordance

3. The Commission may modify the Model Rules of Procedure.

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

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the panel request and to make findings, determinations, and recommendations as provided in Articles 20.10.6 and 20.12.3 and to deliver the written reports referred to in Articles 20.12 and 20.13."

5. If the complaining Party in its panel request has identified that a measure has nullified or impaired benefits, in the sense of Annex 20.2, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of the other Party's failure to conform with the obligations of this Agreement or of a Party's measure found to have caused nullification or impairment in the sense of Annex 20.2, the terms of reference shall so indicate.

Article 20.11. Role of Experts

On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article 20.12. Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, the submissions

and arguments of the Parties, and on any information before it pursuant to Article 20.11.

2. If the Parties request, the panel may make recommendations for resolution of the dispute.

3. Unless the Parties otherwise agree, the panel shall, within 120 days after the last panelist

is selected or such other period as the Model Rules of Procedure established pursuant to Article 20.10 may provide, present to the Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 20.10.6;

(b) its determination as to whether a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Annex 20.2, or any other determination requested in the terms of reference; and

(c) its recommendations, if the Parties have requested them, for resolution of the dispute.

4. When the panel considers that it cannot provide its report within 120 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. In no case should the period to provide the report exceed 180 days. The panel shall inform the Parties of any determination under this paragraph no later than seven days after the initial written submission of the complaining Party and shall adjust the remainder of the schedule accordingly.

5. Panelists may furnish separate opinions on matters not unanimously agreed.

6. A Party may submit written comments to the panel on its initial report within 14 days of

presentation of the report or within such other period as the Parties may agree.

7. After considering any written comments on the initial report, the panel may reconsider its report and make any further examination it considers appropriate.

Article 20.13. Final Report

1. The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 20.14. Implementation of Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Annex 20.2, the resolution, whenever possible, shall be to eliminate the non- conformity or the nullification or impairment. (3)

3. Where appropriate, the Parties may agree on a mutually satisfactory action plan to resolve the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel. If the Parties agree on such an action plan, a complaining Party may have recourse to Article 20.15.2 only if it considers that the Party complained against has failed to carry out the action plan. (4)

(a) the level of benefits proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not

determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. In considering what benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 20.2; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

6. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

7. Unless the Commission otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. dollars, or in an equivalent amount of Panamanian currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Commission may decide that an assessment shall be paid into a fund established by the Commission and expended at the direction of the Commission for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under this Agreement.

8. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

(3) Compensation, the payment of monetary assessments, and the suspension of benefits are intended as temporary measures pending the elimination of any non-conformity or nullification or impairment that the panel has found.

(4) For greater certainty, as part of an action plan the Parties may undertake, modify, or enhance cooperation activities.

Article 20.16. Compliance Review

1. Without prejudice to the procedures set out in Article 20.15.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.15 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 20.15.6.

Article 20.17. Five-Year Review

The Commission shall review the operation and effectiveness of Article 20.15 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been paid in five proceedings initiated under this Chapter, whichever occurs first.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 20.18. Referral of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a

Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, either Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 20.19. Private Rights

Neither Party may provide for a right of action under its law against the other Party on the ground that the other Party has failed to conform with its obligations under this Agreement.

Article 20.20. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

4. The Commission may establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes.

5. This committee shall:

(a) report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use, and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area; and

(b) when the committee considers appropriate, promote technical cooperation between the Parties, in furtherance of the objectives identified in paragraph 1.

Chapter Twenty-One. Exceptions

Article 21.1. General Exceptions

1. For purposes of Chapters Three through Seven (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Thirteen, and Fourteen (1) (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) This Article is without prejudice to whether digital products should be classified as goods or services.

Article 21.2. Essential Security

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its

essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. (2)

(2) For greater certainty, if a Party invokes Article 21.2 in an arbitral proceeding initiated under Chapter Ten (Investment) or Chapter Twenty (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

Article 21.3. Taxation

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

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

3. Notwithstanding paragraph 2:

(a) Article 3.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.11 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 11.2 (National Treatment) and Article 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment), and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers, except that nothing in those Articles shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.9.2, 10.9.3, and 10.9.4 (Performance Requirements) shall apply to taxation measures.

6. Article 10.7 (Expropriation and Compensation) and Article 10.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.7 (Expropriation and Compensation) as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.7 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities of the Parties of the claimant and the respondent set out in Annex 21.3 at the time that it gives its notice of intent under Article 10.16.2 (Submission of a Claim to Arbitration) the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral,

the investor may submit its claim to arbitration under Article 10.16 (Submission of a Claim to Arbitration).

Article 21.4. Balance of Payments Measures on Trade In Goods

Should a Party decide to impose measures for balance of payments purposes, it shall do so only in accordance with that Party's rights and obligations under the GATT 1994, including the Declaration on Trade Measures Taken for Balance of Payments Purposes (1979 Declaration) and the Understanding on the Balance of Payments Provisions of the GATT 1994 (BOP Understanding). In adopting such measures, the Party shall immediately consult with the other Party and shall not impair the relative benefits accorded to the other Party under this Agreement. (3)

(3) For greater certainty, this Article applies to balance of payments measures imposed on trade in goods.

Article 21.5 . Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 21.6. Definitions

For purposes of this Chapter:

tax convention *means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and*

taxes and taxation measures *do not include:*

(a) a customs duty; or

(b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

Chapter Twenty-Two. Final Provisions

Article 22.1. Annexes, Appendices, and Footnotes

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

Article 22.2. Amendments

1. The Parties may agree in writing on any amendment of this Agreement.

2. When so agreed, and approved in accordance with the legal requirements of each Party, Anil amendment shall constitute an integral part of this Agreement and shall enter into force on such date as the Parties may agree.

Article 22.3. Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the relevant provision of this Agreement, as appropriate, in accordance with Article 22.2.

Article 22.4. Reservations

Neither Party may enter a reservation in respect of any provision of this Agreement without the written consent of the other Party.

Article 22.5. Entry Into Force and Termination

1. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective legal requirements or on such other date as the Parties may agree.

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

Article 22.6. Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

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

DONE, *at Washington, in duplicate, in English and Spanish, this 28th day of June, 2007.*

FOR THE GOVERNMENT OF THE REPUBLIC OF PANAMA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: