FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLICS OF CENTRAL AMERICA

THE REPUBLIC OF KOREA, hereinafter referred to as "Korea"; in the one part, and

THE REPUBLIC OF COSTA RICA;

THE REPUBLIC OF EL SALVADOR;

THE REPUBLIC OF HONDURAS;

THE REPUBLIC OF NICARAGUA;

And

THE REPUBLIC OF PANAMA;

Hereinafter referred to as the "Republics of Central America", on the other,

STRENGTHENING the special bonds of friendship and cooperation between them;

CONVINCED that a free trade area will create an expanded and secure market for goods and services in their territories and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets while recognizing the differences in their levels of development and the size of their economies;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities, and improve the general welfare in their territories, by liberalizing and expanding trade and investment between their territories;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment, to reduce or eliminate the barriers to trade and to facilitate the investment between their territories;

RECOGNIZING that this Agreement should be implemented with a view to promoting sustainable development in a manner consistent with environment protection and conservation;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral, and bilateral instruments of cooperation to which they are parties; and

PRESERVING their flexibility to safeguard the public welfare;

HAVE AGREED as follows:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A. Initial Provisions

Article 1.1. ESTABLISHMENT OF A FREE TRADE AREA

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

Article 1.2. OBJECTIVES

The objectives of this Agreement 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

Article 1.3. RELATION TO OTHER AGREEMENTS

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

2. For greater certainty, this Agreement shall not be construed to derogate or nullify from any international legal obligation between the Parties that provides for more favorable treatment of goods, services, investments, or persons than that provided for under this Agreement.

3. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and other agreements to which both Parties are party, the Parties may consult with each other with a view to finding a mutually satisfactory solution.

Article 1.4. EXTENT OF OBLIGATIONS

Each Party shall ensure within its territory the observance and fulfillment of all obligations and commitments under this Agreement by all levels of government, except as otherwise provided in this Agreement.

Article 1.5. SCOPE

Unless otherwise provided, the provisions of this Agreement apply between Korea and Costa Rica, El Salvador, Honduras, Nicaragua and Panama, considered individually. This Agreement does not apply between Costa Rica, El Salvador, Honduras, Nicaragua and Panama.

Section B. General Definitions

Article 1.6. DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

AD Agreement means the Agreement on Implementation of Article VI of the GATT 1994, contained in Annex 1A to the WTO Agreement;

covered investment means, with respect to a Party, an investment, as defined in Article 9.29 (Definitions), in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a product of the other Party, including any form of surtax or surcharge imposed on or 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, or any equivalent provision of a successor agreement to which both Parties are party;

(b) antidumping, countervailing, or safeguard duty that is applied in accordance with a Party's law and consistently with Chapter 7 (Trade Remedies);

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

(d) duty imposed pursuant to any agricultural safeguard measure taken under the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement.

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

days means calendar days;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, 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;

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

GATS means the WTO General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

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

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

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;

Import Licensing Agreement means the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement;

Joint Committee means the Joint Committee established under Article 21.1 (Joint Committee);

local level of government means:

(a) for Korea, a local government as defined in the Local Autonomy Act; and

(b) for the Republics of Central America, the municipalities;

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

MFN means Most Favored Nation;

national means a natural person who has the nationality of a Party according to Annex 1-A;

originating means qualifying under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

Parties means the Republics of Costa Rica, El Salvador, Honduras, Nicaragua and Panama, referred to as the "Republics of Central America" on one hand, and the Republic of Korea, on the other;

Party (1) (2) 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;

SCM Agreement means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measure, contained in Annex 1A to

the WTO Agreement;

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

TBT Agreement means the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement;

territory means for a Party the territory of that Party as set out in Annex 1-A;

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

WTO means the World Trade Organization; and

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

(1) For greater certainty, the "other Party" means for Korea: one of the Republics of Central America, and for the Republics of Central America: Korea, except as otherwise provided in this Agreement

(2) For greater certainty, "non –Party" means any State other than Korea and the respective Republic of Central America for which the Agreement is being applied.

Chapter 2. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 2.1. SCOPE

Except as otherwise provided in this Agreement, this Chapter shall apply to trade in goods of a Party.

Section A. National Treatment

Article 2.2. NATIONAL TREATMENT

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

2. Paragraph 1 shall not apply to the measures set out in Annex 2-A.

Section B. Elimination of Customs Duties

Article 2.3. CLASSIFICATION OF GOODS

The classification of goods in trade between the Parties shall be that set out in each Party's tariff nomenclature in conformity with the Harmonized System.

Article 2.4. ELIMINATION OF CUSTOMS DUTIES

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

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 2-B.

3. If at any moment a Party reduces its applied MFN customs duty rate after the date of entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule included in Annex 2-B.

4. 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 2-B. Notwithstanding Article 21.1 (Joint Committee), 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 2-B for such good when approved by such Partiesin accordance with their applicable legal procedures. After such Parties conclude an agreement under this paragraph, they shall notify the other Republics of Central America of the terms of that agreement.

5. For greater certainty, a Party may:

(a) raise a customs duty to the level established in its Schedule to Annex 2-B 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 2.5. WAIVER OF CUSTOMS DUTIES

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

Article 2.6. 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 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 or maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

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 the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

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

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

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

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

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

Article 2.7. GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

1. Neither Party may apply a customs duty to a good, regardless of its origin, that reenters 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 the repair or alteration:

(a) could be performed in the territory of the Party from which the good was exported for repair or alteration; or

(b) has increased the value of the good.

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

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

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

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

Article 2.8. 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) the 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) the advertising materials be imported in packets that each contain no more than one copy of each such material and that neither the materials nor the packets form part of a larger consignment.

Section D. Non-Tariff Measures

Article 2.9. IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party,

except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

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; or

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

3. Neither Party may, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

4. For greater certainty, paragraph 3 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purposes of facilitating communications between its regulatory authorities and that person.

5. For the purposes of paragraph 3, distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

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

Article 2.10. IMPORT LICENSING

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

2. (a) After the date of entry into force of this Agreement, each Party shall promptly notify the other Party of any existing import licensing procedures. The notification shall:

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

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

(b) Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government Internet site. To the extent possible, the Party shall do so at least 30 days before the new procedure or modification takes effect.

3. Neither Party may apply an import licensing procedure to a good of the other Party unlessit has complied with the requirements of paragraph 2 with respect to that procedure.

Article 2.11. ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure that all fees and charges imposed in connection with importation and exportation shall be consistent with their obligations under Article VIII:1 of GATT 1994 and its interpretive notes, which are hereby incorporated into and made part of this Agreement, mutatis mutandis.

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 an updated list of the fees and charges it imposes in connection with importation or exportation.

Article 2.12. EXPORT DUTIES, TAXES, OR OTHER CHARGES

Except as otherwise provided in this Agreement, 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 the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption. This paragraph shall not apply to the measures set out in Annex 2-C.

Article 2.13. STATE TRADING ENTERPRISES

The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of GATT 1994, its interpretative notes, and the Understanding on the Interpretation of Article XVII of GATT 1994, which are incorporated into and made part of this Agreement, mutatis mutandis.

Article 2.14. TRADE RELATED NON-TARIFF MEASURES

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

2. The Committee on Trade in Goods shall review the non-tariff measure referred to in paragraph 1(1), consider approaches that may better facilitate trade between the Parties and present to the Parties the results of its consideration, including any recommendation, preferably within 12 months. If necessary, the results of the consideration and recommendations of the Committee on Trade in Goods shall be submitted to the Joint Committee for consideration and/or action during their next meeting.

(1) The Committee on Trade in Goods may review the non-tariff measure, unless such measure could be addressed under a Chapter-specific consultation mechanism established under another Chapter.

Article 2.15. TARIFF RATE QUOTA (TRQ) ADMINISTRATION

1. Each Party shall implement and administer tariff-rate quotas (hereinafter referred to as the "TRQs") set out in Appendix 2-B-1 of its Schedule to Annex 2-B in accordance with Article XIII of 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, non-discriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end-user preferences; and

(b) any person of a Party that fulfills the importing Party's legal and administrative requirements shall be eligible to apply and to be considered for a TRQ allocation by the Party.

3. Each Party shall make every effort to administer its TRQs in a manner that allows importers to fully utilise the TRQs quantities.

4. On the written request of either Party, the Parties shall consult regarding a Party's administration of its TRQs.

Section E. Institutional Provisions

Article 2.16. COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. Unless the Parties otherwise agree, the Committee shall meet at least once a year or upon request of a Party or the Joint Committee to consider matters arising under this Chapter and Chapter 7 (Trade Remedies). Meetings may be conducted in person or by any technological means available to the Parties.

3. The Committee's functions shall include:

(a) monitoring the correct application and administration of this Chapter and Chapter 7 (Trade Remedies);

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

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

(d) providing a forum for discussion or the exchange of information on matters related to this Chapter and Chapter 7 (Trade Remedies), which may, directly or indirectly affect trade between the Parties with a view to minimizing their negative effects

on trade and seeking mutually acceptable alternatives;

(e) making recommendations to the Joint Committee with regards to matters of its competence; and

(f) carrying out other functions as may be assigned by the Joint Committee or agreed by the Parties.

Section F. Definitions

Article 2.17. DEFINITIONS

For the purposes of this Chapter:

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;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party's laws, regulations, or procedures governing temporary admission, 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;

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

goods 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;

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 an 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;

and

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.

Chapter 3. RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A. Rules of Origin

Article 3.1. ORIGINATING GOODS

Except as otherwise provided in this Chapter, a good shall be treated as originating in a Party where the good is:

(a) wholly obtained or produced entirely in the territory of a Party;

(b) produced entirely in the territory of a Party, exclusively from originating materials under this Chapter; or

(c) produced entirely in the territory of a Party using non-originating materials, satisfying the requirements under Annex 3-A, and the good shall satisfy all the other applicable requirements of this Chapter.

Article 3.2. WHOLLY OBTAINED OR PRODUCED GOODS

For the purposes of Article 3.1(a), the following goods are wholly obtained or produced entirely in the territory of a Party:

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

(b) goods obtained from live animals referred to in subparagraph (a) in the territory of a Party;

(c) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted within the land territory, the internal waters or within the territorial sea of a Party;

(d) goods of sea-fishing and other marine products taken from the waters, seabed or subsoil outside the territorial sea of a Party by vessels registered or recorded with a Party and flying the flag of that Party;

(e) goods produced or processed on board factory ships registered or recorded with a Party and flying the flag of that Party, exclusively from goods referred to in subparagraph (d);

(f) plants and plant products grown and harvested, picked, or gathered in the territory of a Party;

(g) mineral goods and other naturally occurring substances extracted from the soil, waters, seabed, or beneath the seabed of a Party;

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

(i) waste and scrap derived from:

(i) manufacturing operations conducted in the territory of a Party; or

(ii) used goods collected in the territory of a Party, provided that such waste and scrap is fit only for the recovery of raw materials; and

(j) goods produced exclusively from goods specified in subparagraphs (a) through (i)

Article 3.3. REGIONAL VALUE CONTENT (RVC)

1. The regional value content of a good shall be calculated on the basis of one of the following methods:

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

$$RVC = \frac{FOB - VNM}{FOB} \times 100$$

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

$$RVC = \frac{VOM}{FOB} \times 100$$

where:

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

FOB is the free on board value of the good;

VNM is the value of the non-originating materials; and

VOM is the value of the originating materials.

2. The value of the non-originating materials shall be:

(a) in the case of a material imported directly by the producer of a good, the CIF value at the time of importation of the material;

(b) in the case of a material acquired by the producer in the territory where the good is produced, the transaction value, without considering the costs of freight, insurance, packing, and the other costs incurred in the transportation of the material from the warehouse of the supplier to the place where the producer is; or

(c) in the case of a self-produced material or where the relationship between the producer of the good and the seller of the material influences the price actually paid or payable for the material, the sum of all costs incurred in the production of the material, including general expenses. Additionally, it will be possible to add an amount for profit equivalent to the profit added in the normal course of trade.

3. The values referred to in this Article shall be determined in accordance with the Customs Valuation Agreement.

Article 3.4. INTERMEDIATE MATERIALS

When an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for the purposes of determining the originating status of the subsequently produced good.

Article 3.5. NON-QUALIFYING OPERATIONS

1. The following operations shall be considered to be non-qualifying operations to confer the status of originating goods, whether or not the requirements under this Chapter are satisfied:

(a) operations to ensure the preservation of goods in good condition during transport and storage;

(b) changes of packing or breaking-up or assembly of packages;

(c) washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;

(d) ironing or pressing of textiles;

(e) simple painting and polishing operations;

(f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(g) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and all other simple packing

operations;

(h) simple mixing of products, whether or not of different kinds;

(i) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(j) slaughter of animals;

(k) drying, salting (or keeping in brine), refrigeration or freezing;

(l) affixing marks, labels, logos, and other like distinguishing signs on the good or its packaging;

(m) peeling, stoning, and shelling of fruits, nuts, and vegetables;

(n) sharpening, simple grinding, or simple cutting;

(o) sifting, screening, sorting, classifying, grading; or

(p) a combination of two or more operations specified in subparagraphs (a) through (o).

2. The provisions of this Article shall not apply to originating goods produced with originating materials of the Parties.

3. For the purposes of this Article:

(a) simple means activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity; and

(b) simple mixing means activities which need neither special skills nor machines, apparatus, or equipment especially produced or installed for carrying out the activity but does not include chemical reaction.

Article 3.6. ACCUMULATION.

1. Originating goods or materials from the territory of Costa Rica, El Salvador, Honduras, Nicaragua, Panama or Korea, which are used in the territory of Costa Rica, El Salvador, Honduras, Nicaragua, Panama or Korea as a material for a finished good, shall be considered to be originating from the territory of the latter where the working or processing of the finished good has taken place. (1) (2)

2. Korea and at least one of the Republics of Central America may consider the possibility of developing protocols of Rules of Origin for the purposes of accumulating origin with third countries (3) with which both Parties have trade agreements.

(1) For the purposes of implementing paragraph 1, the accumulation of origin shall only be applied between the Republics that have the same Product Specific Rules of Origin.

(2) A Party shall not accumulate goods or materials of a Republic of Central America for which this Agreement has not entered into force.

(3) For greater certainty, “third countries” means any countries other than Korea and the Republics of Central America.

Article 3.7. DE MINIMIS

A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-A will nonetheless be considered to be originating if:

(a) for a good, other than that provided for in Chapters 01 through 24 and Chapter 50 through 63 of the HS, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good;

(b) for a good provided for in Chapters 15 through 24 of the HS, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good, provided that the non-originating material is provided for in a different subheading from that of the good for which the origin is being determined under this subparagraph; or

(c) for a good provided for in Chapters 50 through 63 of the HS, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the good.

Article 3.8. FUNGIBLE GOODS OR MATERIALS

1. In determining whether a good or material is originating for the purposes of granting preferential tariff treatment, any fungible goods or materials shall be distinguished by:

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

(b) using any inventory management method, such as averaging, last-in-firstout (LIFO) or first-in-first-out (FIFO), recognized in the generally accepted accounting principles of a Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. 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 3.9. SETS

A set, as defined in General Rule 3 of the HS, shall be regarded as originating when all the components of the set are originating. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods does not exceed 15 percent of the total value of the set, determined in accordance with Article 3.3.

Article 3.10. ACCESSORIES, SPARE PARTS, AND TOOLS

The origin of the accessories, spare parts, or tools delivered with a good at the time of importation:

(a) shall be disregarded if the good is subject to a change in tariff classification requirement; and

(b) 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, if the good is subject to a regional value content requirement, provided that:

(a) the accessories, spare parts, or tools are 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.

Article 3.11. PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

1. Where packaging materials and containers are classified with a good, the origin of the packaging materials and containers in which the good is packaged for retail sale, shall be disregarded in determining the origin of the good, provided that:

(a) the good is wholly obtained or produced entirely in the territory of a Party as set out in Article 3.1(a);

(b) the good is produced exclusively from originating materials, as set out in Article 3.1(b); or

(c) the good is subject to a change in tariff classification requirement set out in Annex 3-A.

2. Where a good is subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account when determining the origin of the good.

Article 3.12. PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Packing materials and containers used to protect a good during its transportation shall not be taken into account when determining the origin of the good.

Article 3.13. INDIRECT MATERIALS

1. For the purposes of determining whether a good is originating, the origin of the indirect materials defined in paragraph 2

shall not be taken into account.

2. Indirect materials means articles used in the production of a good which are neither physically incorporated into it, nor form part of it, including:

(a) fuel, energy, catalysts, and solvents;

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

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

(d) tools, dies, and molds;

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

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

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

Article 3.14. DIRECT TRANSPORT

1. A good shall be transported directly from the exporting Party to the importing Party to maintain its originating status.

2. Notwithstanding paragraph 1, the good shall be considered to be transported directly from the exporting Party to the importing Party if the good whose transport involves transit through one or more Parties or non-Parties, with or without transshipment or temporary storage there, provided that:

(a) the good is under control of the customs authority; and

(b) the good does not undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition.

3. Evidence that the conditions set out in paragraph 2 have been fulfilled shall be supplied to the customs authorities of the importing Party by the production of:

(a) a single transport document covering the passage from the exporting Party through the country of transit;

(b) a transport document covering the passage from the country of transit to the importing Party and certification issued by the customs authorities of the country of transit containing the following:

(i) an exact description of the products;

(ii) the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and

(iii) the conditions under which the products remained in the transit country; or

(c) failing these, any substantiating documents to the satisfaction of the customs authority of the importing Party, to be agreed by the Parties at the Committee on Rules of Origin and Origin Procedures, and Customs Procedures and Trade Facilitation, established in Chapter 4 (Customs Procedures and Trade Facilitation).

Article 3.15. OUTWARD PROCESSING

Notwithstanding Article 3.1, certain goods shall be considered to be originating even if they have undergone working or processing outside Korea, on materials exported from Korea and subsequently re-imported there, provided that the working or processing is done in the areas designated by the Parties pursuant to Annex 3-B.

Article 3.16. RE-EXPORTATION OF GOODS (4)

1. Korea and the Republics of Central America recognize a certificate of reexportation of goods issued by a Party certifying the control and supervision of goods that came from a non-Party to this Agreement and were subsequently re-exported to the other Party from a free zone (5) located in the territory of the re-exporting Party. The originating status of such goods

shall be decided by the trade agreement in force between the non-Party and the other Party.

2. For the purposes of the application of paragraph 1, it is required that:

(a) in the free zone of a Party, the goods have not been subject to transformation processes that have changed their originating status, and the goods have remained under the control and supervision of the customs authorities; and

(b) the operations (6) carried out on the goods shall be specified in the certificate of re-exportation issued by the customs authority of the free zone in the territory of a Party.

4 For greater certainty, this Article shall apply only between Korea and the Republics of Central America and not between the Republics of Central America as referred to in Chapter 1 (Initial Provisions and General Definitions), Article 1.5 (Scope).

(5) The free zone shall be located within Korea or the Republics of Central America.

(6) For greater certainty and for the purposes of this Article, such operations may include logistical operations allowed under the trade agreement between a Party and a non-Party, such as transshipment, unloading, storage, deconsolidation or splitting of shipments, invoicing, reloading, repacking, labeling, packaging or consolidation, or any other operation that does not transform or change the originating status of the goods.

Section B. Origin Procedures

Article 3.17. CERTIFICATE OF ORIGIN

1. Each Party shall grant preferential tariff treatment in accordance with this Agreement to an originating good imported from the territory of the other Party on the basis of a Certificate of Origin.

2. For the purposes of this Chapter, the Parties established a single format of Certificate of Origin as set out in Annex 3-C, which shall enter into force with this Agreement and may thereafter be modified by the Joint Committee.

3. In order to obtain preferential tariff treatment, an importer shall, in accordance with the procedures applicable in the importing Party, request preferential tariff treatment at the time of importation of an originating good.

4. A Certificate of Origin which certifies that a good being exported from the territory of a Party into the territory of the other Party qualifies as originating shall:

(a) be in a printed format or such other medium, including electronic format, to be agreed by the Parties; and

(b) be completed in English.

5. Each Party shall:

(a) require an exporter or producer in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(i) its knowledge that the good qualifies as originating;

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating; or

(iii) a completed and signed Certificate of Origin for the good voluntarily provided to the exporter by the producer.

6. A Certificate of Origin, duly completed and signed by an exporter or producer in a Party, may apply to:

(a) a single shipment of one or more goods into the territory of the other Party; or

(b) multiple shipments of identical goods to the same importer within any period specified in the Certificate of Origin, not exceeding one year from its date of issuance.

Article 3.18. WAIVER OF CERTIFICATE OF ORIGIN

A Certificate of Origin shall not be required where:

(a) the customs value of the importation does not exceed 1,000 US dollars or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be carried out or planned for the purposes of evading compliance with the Party's laws governing claims for preferential tariff treatment under this Agreement; or

(b) it is a good for which the importing Party does not require the importer to present a Certificate of Origin demonstrating origin.

Article 3.19. VALIDITY OF CERTIFICATE OF ORIGIN

1. A Certificate of Origin shall be valid for one year from its date of signature in the exporting Party.

2. Certificates of Origin which are submitted to the customs authorities of the importing Party after the final date for presentation specified in paragraph 1 may be accepted for the purposes of applying preferential tariff treatment, where the failure to submit these documents by the final date set is due to natural disasters.

Article 3.20. CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided for in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment to:

(a) make a written statement in the customs declaration, based on a valid Certificate of Origin, indicating that the good qualifies as originating;

(b) have in its possession the Certificate of Origin at the time the statement referred to in subparagraph (a) is made;

(c) have in its possession the documents which certify that the requirements established in Article 3.14 have been met, where applicable; and

(d) submit the valid Certificate of Origin, as well as documents referred to in subparagraph (c) to the customs authority, where it is required.

2. Where an importer has a reason to believe that a Certificate of Origin on which a statement was based contained incorrect information, the importer shall make a corrected statement and pay any customs duty owed, in accordance with the legislation of each Party.

3. Where an importer does not comply with any requirements under this Chapter, preferential tariff treatment shall be denied to the goods imported from the territory of the exporting Party.

4. Where the customs authority of the importing Party has reason to believe that a good imported into its territory is not originating or does not comply with the requirements established in this Chapter, the customs authority of the importing Party shall not impede the release of the good, and shall proceed in accordance with its relevant legislation.

Article 3.21. POST-IMPORTATION CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

Where a good was originating when it was imported into the territory of the importing Party, but the importer of the good did not claim preferential tariff treatment at the time of importation, that importer may, within one year following the date of importation, claim preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, upon presentation to the importing Party of:

(a) a written or electronic declaration or statement, in accordance with the legislation of the importing Party, that the good was originating at the time of importation;

(b) an original Certificate of Origin demonstrating that the good was originating; and

(c) such other documents related to the importation of the good as the importing Party may require.

Article 3.22. RECORD KEEPING REQUIREMENTS

1. The records that may be used to prove that a good covered by a Certificate of Origin is originating and has fulfilled other requirements under this Chapter include, but are not limited to:

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

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

(c) documents related to the production of the good in the form in which it was exported; and

(d) such other documents as the Parties may agree.

2. An exporter or producer in the territory of the exporting Party that completes and signs a Certificate of Origin shall keep for five years from the date of issuance of the Certificate of Origin, the records referred to in paragraph 1.

3. An importer claiming preferential tariff treatment for a good imported into the territory of a Party shall keep for a period specified in legislation of the importing Party from the date of importation of the good, the records related to the importation, including a copy of the Certificate of Origin.

4. An importer, exporter, or producer may choose to keep the records referred to in paragraph 1 in any medium that allows for prompt retrieval, including, but not limited to, a digital, electronic, optical, magnetic, or written form.

Article 3.23. DISCREPANCIES AND FORMAL ERRORS

1. Where the competent authority of the importing Party determines that a Certificate of Origin is illegible, has errors, omissions, deletions, erasures, amendments, has writing between the lines, or has not been filled in accordance with Article 3.17, it shall grant the importer, a one-time opportunity to present a new certificate within the next 45 days of the notification of the rejection of said certificate. The new Certificate of Origin shall be valid for the remainder of the period established in the original Certificate of Origin.

2. Orthographic and typing errors in a Certificate of Origin shall not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

Article 3.24. VERIFICATION

1. For the purposes of determining whether a good imported into the territory of a Party from the territory of the other Party qualifies as originating, the competent authority of the importing Party may conduct a verification by means of:

(a) written requests for additional information from the importer;

(b) written requests for additional information from the exporter or producer;

(c) requests that the competent authority of the exporting Party assists in verifying the origin of the good;

(d) verification visits to the premises of an exporter or producer in the territory of the other Party, along with officials of the competent authority of the other Party to review the facilities, the production processes of the good and the records referred to in Article 3.22, including accounting files; or

(e) any other means agreed by the Parties.

2. Requests made under paragraph 1 by the competent authority of the importing Party shall be in English. All the information provided in response to said requests shall be in English or in the official language of the importing Party, based on the choice of the exporter or producer.

3. For the purposes of paragraphs 1(a) and 1(b),

(a) the written request for additional information made by the importing Party will indicate that the time period the importer, exporter, or producer has to provide the information and documentation required will be 30 days from the date of the receipt of the written request or for such a longer period as the Parties may agree; and

(b) where an exporter or producer fails to provide the information and documentation required within the period referred to in subparagraph (a), the importing Party may deny preferential tariff treatment to the good in question after providing at least a 30-day written notice to the importer, exporter or producer to provide written comments or additional information that will be taken into account prior to completing the verification.

4. Where the competent authority of the importing Party requests assistance under paragraph 1(c):

(a) it shall provide the competent authority of the exporting Party with:

(i) the reasons why such assistance for verification is requested;

(ii) the Certificate of Origin of the good or a copy thereof; and

(iii) any information and documents as may be necessary for the purposes of such request;

(b) the competent authority of the exporting Party shall provide the competent authority of the importing Party with a written statement in English, including facts and findings, and any supporting documents made available by the exporter or producer. This statement shall indicate clearly whether the documents are authentic and whether the good concerned is originating and has fulfilled other requirements under this Chapter. If the good can be considered to be originating, the statement shall include a detailed explanation of how the good obtained the originating status; and

(c) in case where the competent authority of the exporting Party fails to provide the written statement within 150 days following the date of the receipt of the request or where the written statement provided does not contain sufficient information, the importing Party may deny preferential tariff treatment to the relevant good.

5. Where the competent authority of the importing Party intends to conduct verification under paragraph 1(d):

(a) it shall notify in writing, 30 days prior to the verification visit, the exporter or producer of such a request, and provide a copy of the said notification to the competent authority of the exporting Party. In case where the exporter or producer does not give its written consent to such a request within 30 days following the date of the receipt of the notification, the importing Party may deny preferential tariff treatment to the relevant good; and

(b) when the exporter or producer agrees to the request of verification visit but needs to postpone the proposed verification visit, the competent authority of the importing Party shall be notified together with the approval of the verification visit. Such postponement shall not exceed 60 days from the proposed date of the verification visit.

6. The importing Party shall, within one year following the initiation of the verification, notify the importer and the exporter or producer, in writing, of the determination whether the good is originating, as well as factual findings and the legal basis for the determination. In necessary cases and for one time only, the period referred to above may be extended by up to 90 days. This extension shall be notified to the importer, exporter or producer, and the competent authority of the exporting Party.

7. A Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the competent authority of the Party had already determined that Anil identical good was not eligible for such treatment, until it is demonstrated that the good complies with the requirements under this Chapter.

8. A Party may provide electronically to the other Party all the information requested under this Article, including supporting documents and all other related information.

Article 3.25. DENIAL OF PREFERENTIAL TARIFF TREATMENT

Except otherwise provided in Article 3.23 or any other of this Chapter, the importing Party may deny a claim for preferential tariff treatment or recover unpaid duties, in accordance with its laws and regulations, where:

(a) the good does not meet the requirements of this Chapter; or

(b) the exporter, producer, or importer of the good fails or has failed to comply with any of the applicable requirements for obtaining preferential tariff treatment.

Article 3.26. UNIFORM REGULATIONS

The Parties shall establish Uniform Regulations regarding the interpretation, application and administration of this Chapter and other matters agreed by the Parties.

Article 3.27. THIRD COUNTRY INVOICING

The customs authority in the importing Party shall not reject a Certificate of Origin only for the reason that the invoice is issued by a person located outside the territory of the exporting Party.

Article 3.28. DEFINITIONS

For the purposes of this Chapter:

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

CIF means the value of the good in the country of origin inclusive of the cost of insurance and freight up to the port or place of entry in the country of importation;

competent authority means:

(a) for Korea, the Ministry of Strategy and Finance;

(b) for Costa Rica:

(i) for administration purposes, the Directorate of Application of International Trade Agreements (Dirección de Aplicación de Acuerdos Comerciales Internacionales) of the Ministry of Foreign Trade (Ministerio de Comercio Exterior); and

(ii) for verification procedures, the General Directorate of Customs (Dirección General de Aduanas) of the Ministry of Finance (Ministerio de Hacienda);

(c) for El Salvador:

(i) for administration purposes, the Trade Agreement Administration Bureau (Dirección de Administración de Tratados Comerciales) of the Ministry of Economy (Ministerio de Economía); and

(ii) for verification procedures, the General Directorate of Customs (Dirección General de Aduanas) of the Ministry of Finance (Ministerio de Hacienda);

(d) for Honduras,

(i) for administration purposes, Secretariat of State in the Office of Economic Development (Secretaría de Estado en el Despacho de Desarrollo Económico); and

(ii) for verification procedures, the General Directorate for Administration and Negotiation of Agreements in coordination with the Adjunct Directorate of Customs Revenue (Dirección General de Administración y Negociación de Tratados en coordinación con la Dirección Adjunta de Rentas Aduaneras);

(e) for Nicaragua:

(i) for administration purposes, the Directorate of Application and Negotiation of Trade Agreements (Dirección de Aplicación y Negociación de Acuerdos Comerciales) of the Ministry of Development, Industry and Commerce (Ministerio de Fomento, Industria y Comercio); and

(ii) for verification procedures, the General Directorate of Customs Services (Dirección General de Servicios Aduaneros); and

(f) for Panama:

(i) for issuance of Certificate of Origin purpose, the Ministry of Commerce and Industries (Ministerio de Comercio e Industrias); and

(ii) for verification of proofs of origin, the National Customs Authority (Autoridad Nacional de Aduanas), or their successors;

exporter means a person located in the territory of a Party from where a good is exported by such a person;

FOB means the value of the good free on board, inclusive of the cost of transportation to the port or site of final shipment abroad, regardless of the mode of transportation;

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;

importer means a person located in the territory of a Party where a good is imported by such a person;

material means a good that is used in the production of another good, including any components, ingredients, raw materials, parts, or pieces;

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

originating material means a material that qualifies as originating under Article 3.1;

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

production means growing, raising, extracting, picking, gathering, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.

Chapter 4. CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1. 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 shall provide interested persons the opportunity to comment before adopting them.

Article 4.2. RELEASE OF GOODS

1. In order to facilitate trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods.

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

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

(b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;

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

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

(1) A Party may require importers to provide guarantees in the form of sureties, deposits, or other appropriate instruments sufficient to cover payment of the customs duties, taxes, and fees its customs authority ultimately applies in connection with the importation of the good.

Article 4.3. AUTOMATION

Each Party shall use information technology that expedites procedures for the release of goods and shall:

(a) make, to the extent possible, electronic systems accessible to customs users;

(b) endeavor to use international standards;

(c) endeavor to develop electronic systems that are compatible with the other Party's systems, in order to facilitate exchange of international trade data; and

(d) endeavor to develop a set of common data elements and processes in accordance with World Customs Organization (hereinafter referred to as the "WCO") Customs Data Model and related WCO recommendations and guidelines.

Article 4.4. RISK MANAGEMENT

Each Party shall endeavor to adopt or maintain electronic or automated risk management systems for assessment and targeting 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.

Article 4.5. 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 and regulations governing importations that are likely to substantially affect the operation of this Agreement.

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

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment, and verification procedures;

(b) tariff classification, valuation, and determination of origin for the preferential tariff treatment of imported goods under this Agreement; and

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

Article 4.6. AUTHORIZED ECONOMIC OPERATOR

1. The Parties shall promote the implementation of Authorized Economic Operator programs in accordance with the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade.

2. The obligations, requirements, formalities of the programs, as well as the benefits offered to the companies that comply with the requirements shall be established in accordance with the legislation of each Party.

3. The Parties shall promote negotiations for Mutual Recognition Arrangements of the Authorized Economic Operator programs.

Article 4.7. CONFIDENTIALITY

1. Where a Party that provides information to the other Party in accordance with this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) designates the information as confidential, the other Party shall keep the information confidential. The Party providing the information may require the other Party to furnish written assurance that the information will be held in confidence, will be used only for the purposes the other Party specified in its request for information, and will not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may nevertheless use or disclose the information for law enforcement purposes or in the course of judicial proceedings, in accordance with the legislation of the Party.

3. A Party may decline to provide information that the other Party has requested where that Party has failed to act in conformity with paragraph 1.

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

Article 4.8. 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 and expedited customs procedure for express shipments;

(b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;

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

(d) to the extent possible, provide for certain goods to be cleared 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; and

(g) under normal circumstances, provide that no customs duties shall be assessed on express shipments valued at 150 US dollars or less. The formal entry documents shall be simplified in accordance with the laws and regulations of each Party. (2)

(2) Notwithstanding subparagraph (g), a Party may require the express shipments accompanied by an airway bill or other bill of lading. For restricted goods, a Party may require formal entry documents, duties or taxes.

Article 4.9. REVIEW AND APPEAL

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

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

(b) judicial review of the determinations.

2. For greater certainty, each Party shall allow an exporter or producer to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article 4.7.

Article 4.10. 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 tariff treatment under this Agreement.

Article 4.11. ADVANCE RULINGS

1. Each Party shall issue, through its competent authority, 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 (3) with regard to:

(a) tariff classification;

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

(c) whether a good is originating under this Agreement; and

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

2. Each Party shall issue an advance ruling within 120 days, or such shorter period as may be established by a Party in its legislation, after its competent authority receives a request provided that the requester has submitted all the information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts or circumstances forming the basis of this ruling are subject of administrative or judicial review. A Party that, pursuant to this paragraph, declines to issue an advance ruling shall promptly notify the requester in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

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 laws, each Party may publish its advance rulings, including on the Internet.

6. If a requester provides false information, 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.

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

Article 4.12. MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

1. The customs authorities of the Parties shall assist each other, within their competence and capacities, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. The authority requested to assist, subject to its competence and resources, shall endeavor to take all reasonable measures to execute a request in a reasonable period of time

Article 4.13. COMMITTEE ON RULES OF ORIGIN AND ORIGIN PROCEDURES, AND CUSTOMS PROCEDURES AND TRADE FACILITATION

1. The Parties hereby establish a Committee on Rules of Origin and Origin Procedures, and Customs Procedures and Trade Facilitation (hereinafter referred to as the "Committee"), comprising representatives (4) of each Party. The Committee shall be responsible for addressing rules of origin, origin procedures, trade facilitation and customs matters.

2. The Committee shall ensure the proper functioning of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

3. The Committee´s functions shall include:

(a) ensuring the effective, uniform, and consistent administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures);

(b) revising Annex 3-A (Product Specific Rules of Origin) on the basis of the transposition of the HS;

(c) advising the Joint Committee of proposed solutions to address issues related to:

(i) interpretation, application, and administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) including Annex 3-A (Product Specific Rules of Origin)

(ii) tariff classification and customs valuation; and

(iii) issues arising from the adoption by a Party of operational practices not in conformity with this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) which may adversely affect the flow of trade among the Parties;

(d) adopting customs practices and standards which facilitate commercial exchange among the Parties, according to the international standards;

(e) presenting proposals for the Joint Committee's approval on modifications of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), including Annex 3-A (Product Specific Rules of Origin), in the event aconsensus is reached among the Parties;

(f) working on the development of an electronic certification and verification system;

(g) resolving any issues related to customs matters concerning this Agreement (5); and

(h) carrying out other functions as may be assigned by the Joint Committee or agreed by the Parties.

4. The Committee may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and the functions of the mechanisms established in this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

5. Unless the Parties otherwise agree, the Committee shall meet every year. Meetings may be conducted in person or by any technological means available to the Parties.

6. The Committee shall report to the Joint Committee on the results of each of its meetings.

(4) For Korea, the representative will be Korea's customs authorities.

(5) In case of disagreement between the Parties, the matter in dispute will be decided by the Joint Committee.

Article 4.14. TECHNICAL CONSULTATION

1. The competent authority of a Party may, at any time, request consultations with the competent authority of the other Party on any matter arising from the operation or implementation of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), in cases where there are reasonable grounds provided by the requesting Party.

2. For the purposes of paragraph 1, a Party´s request for consultations shall be made through the contact points and the requested Party shall confirm the receipt of request without undue delay. The Parties may consult the matter by email or any medium convenient for the Parties and shall endeavor to reach a resolution on the matter.

3. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee established under Article 4.13 for consideration.

Chapter 5. SANITARY AND PHYTOSANITARY MEASURES

Article 5.1. OBJECTIVES

The objectives of this Chapter are to:

(a) protect human, animal or plant life or health in the Parties' territories while minimizing negative effects on trade between the Parties;

(b) provide means to address the sanitary and phytosanitary (hereinafter referred to as "SPS") matters arising from bilateral trade between the Parties in an efficient manner; and

(c) enhance cooperation and communication between the competent authorities of the Parties.

Article 5.2. SCOPE

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

Article 5.3. RIGHTS AND OBLIGATIONS

The Parties affirm their rights and obligations under the SPS Agreement taking into account standards, guidelines or recommendations from the Codex Alimentarius Commission, the International Plant Protection Convention (hereinafter referred to as the "IPPC"), and the World Organization for Animal Health (hereinafter referred to as the "OIE").

Article 5.4. COOPERATION

1. The Parties shall strengthen cooperation in implementing the SPS Agreement, taking into account the decisions and recommendations of the WTO Committee on Sanitary and Phytosanitary Measures.

2. The Parties shall strengthen their cooperation in the field of SPS matters with a view to increasing mutual understanding of their respective systems and minimizing negative effects on bilateral trade.

3. In particular, the Parties shall seek to identify, develop, and promote cooperative activities through consultations in the

Committee on Sanitary and Phytosanitary Matters, established in Article 5.6, subject to the availability of appropriated resources of the Parties.

4. Further to paragraphs 1 through 3, cooperative activities of the Parties shall include, but not be limited to:

(a) furthering exchange of experience and cooperation in the development and application of domestic SPS measures as well as international standards;

(b) strengthening cooperation with respect to, inter alia, risk analysis methodology, disease or pest control methods, laboratory testing techniques, and exchange of information on domestic regulations;

(c) enhancing cooperation and exchange of experience between the WTO SPS Enquiry Points of the Parties;

(d) carrying out joint research and sharing the result of such research in SPS areas including animal disease, plant pest and food safety; and

(e) any other cooperative activity mutually agreed by the Parties.

5. The competent authorities of the Parties or several of them may work together with the aim of enhancing regulatory understanding with regard to each Party's SPS requirements for certain products of export interest, and strengthen their capacity and confidence, taking into account the interest of each authority. On this ground, the Parties may discuss their work plan and if necessary, the necessity of a subsidiary working group.

Article 5.5. INFORMATION EXCHANGE

1. Each Party shall ensure that any information or explanation upon request of the other Party pursuant to this Chapter is communicated within a period agreed by the Parties.

2. The Parties shall exchange relevant information with each other through the competent SPS authorities, in a timely manner, regarding serious non-compliance of SPS requirements which results in rejection by the importing Party.

3. Upon request, each Party shall provide an explanation of the risk analysis process and required information for the risk analysis. The importing Party shall inform the status of its risk analysis process, upon request of the exporting Party. If the result of risk analysis allows the importation of goods from the exporting Party, the importing Party shall proceed with the administrative or legislative process within a reasonable period of time.

Article 5.6. COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (hereinafter referred to as the "Committee") comprising representatives of each Party's competent authorities who have responsibility for SPS matters.

2. The objective of the Committee is to discuss matters related to the development or application of SPS measures that affect, or may affect, trade between the Parties. For this purpose, the Committee shall:

(a) monitor the implementation of this Chapter;

(b) enhance mutual understanding of each Party's SPS measures;

(c) strengthen communication and cooperation between the Parties' competent authorities responsible for the matters covered by this Chapter;

(d) exchange information regarding SPS measures, which may affect trade between the Parties including regulations, procedures, approval of exporting establishments, or any change in sanitary status of a Party;

(e) discuss issues, positions, and agendas for meetings of the WTO Committee on Sanitary and Phytosanitary Measures, the Codex Alimentarius Commission, the OIE, the relevant international and regional organizations operating within the framework of the IPPC, and other international and regional forum on food safety and on human, animal, or plant life or health;

(f) consult on SPS matters related to the development or application of SPS measures that affect, or may affect, trade between the Parties, or arising under this Chapter;

(g) consider, if necessary, upon request of a Party, establishing a subsidiary working group for technical discussion with the aim of seeking to address SPS matters of mutual interest to the Parties. The meeting of such working group shall take place

within a period agreed by the Parties and may be conducted by electronic means;

(h) coordinate cooperative activities on SPS matters referred to in Article 5.4; and

(i) carry out other functions as may be assigned by the Parties.

3. The Committee may establish terms of reference for the conduct of its work.

4. Unless the Parties otherwise agree, the Committee shall meet every two years. Meetings may be conducted in person or by any technological means available to the Parties.

5. Each Party shall ensure that appropriate representatives with responsibility for SPS matters participate in the Committee meetings.

6. The Committee shall be coordinated by the following contact points:

(a) for Korea, the Ministry of Agriculture, Food and Rural Affairs;

(b) for Costa Rica, the Ministry of Foreign Trade (Ministerio de Comercio Exterior);

(c) for El Salvador, the Ministry of Economy (Ministerio de Economía);

(d) for Honduras, the Secretariat of Economic Development (Secretaría de Desarrollo Económico);

(e) for Nicaragua, the Ministry of Development, Industry and Commerce (Ministerio de Fomento, Industria y Comercio); and

(f) for Panama, the Ministry of Commerce and Industries (Ministerio de Comercio e Industrias), or their successors.

Article 5.7. DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 6. TECHNICAL BARRIERS TO TRADE

Article 6.1. OBJECTIVES

The objectives of this Chapter are to:

(a) increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;

(b) ensure that standards, technical regulations, conformity assessment procedures, do not create unnecessary obstacles to trade;

(c) effectively solve the relevant problems arising from bilateral trade; and

(d) enhance joint cooperation between the Parties.

Article 6.2. GENERAL PROVISION

The Parties affirm their existing rights and obligations under the TBT Agreement, and to this end the TBT Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 6.3. DEFINITIONS

For the purposes of this Chapter, the terms and definitions of Annex 1 of the TBT Agreement shall apply.

Article 6.4. SCOPE

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations and conformity assessment procedures that may affect the trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter shall not apply to sanitary and phytosanitary measures covered by Chapter 5 (Sanitary and Phytosanitary Measures) or to technical specifications prepared by governmental bodies for production

or consumption requirements of such bodies covered by Chapter 8 (Government Procurement).

Article 6.5. INTERNATIONAL STANDARDS

1. As a basis for its technical regulations and conformity assessment procedures,

each Party shall use relevant international standards, guides, and recommendations to

the extent provided in Articles 2.4 and 5.4 of the TBT Agreement.

2. In determining whether an international standard, guide, or recommendation

within the meaning of Articles 2 and 5, and Annex 3 of the TBT Agreement exists, each

Party shall apply the 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, adopted on 13 November 2000 by the WTO Committee

on Technical Barriers to Trade (Annex 2 to PART 1 of G/TBT/1/Rev. 12), and any

subsequent development thereof.

Article 6.6. TECHNICAL REGULATIONS

1. The Parties agree to make the best use of good regulatory practices, as indicated in the TBT Agreement. In particular, the Parties agree to:

(a) use relevant international standards as a basis for technical regulations including conformity assessment procedures, except when such international standards would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued; and where international standards have not been used as a basis, to explain, upon request of the other Party, the reasons why such standards have been judged inappropriate or ineffective for the aim being pursued; and

(b) provide upon request and without undue delay, information, and where appropriate, written guidance on compliance with their technical regulations to the other Party or its economic operators.

2. Each Party shall, upon written request of the other Party, give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that these regulations adequately fulfill the objectives of its own regulations.

3. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, upon request of the other Party, explain in writing the reasons for its decision.

Article 6.7. CONFORMITY ASSESSMENT PROCEDURES

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. Accordingly, the Parties may agree on the following:

(a) the acceptance of a supplier's declaration of conformity;

(b) the acceptance of the results of conformity assessment procedures by bodies located in the other Party's territory, including those regarding specific technical regulations;

(c) that a conformity assessment body located in a Party's territory may enter into voluntary recognition agreements for the acceptance of the results o its conformity assessment procedures, with a conformity assessment body located in the other Party's territory;

(d) the adoption of accreditation procedures to qualify the conformity assessment bodies located in the other Party's territory;

(e) the designation of conformity assessment bodies located in the other Party's territory; and

(f) the agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party. The Parties shall exchange information on the range of the mechanisms used in their territories.

2. The Parties shall accept, whenever possible, the results of conformity assessment procedures conducted in the territory of the other Party, even when those procedures differ from its own, provided that those procedures offer a satisfactory assurance of applicable technical regulations or standards equivalent to its own procedures. Where a Party does not accept the results of conformity assessment procedures conducted in the territory of the other Party, it shall, upon request of the other Party, explain in writing the reasons for its decision.

3. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 2, and in order to enhance confidence in the permanent reliability of each one of the conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved including verified compliance with relevant international standards through means such as accreditation. Where a Party considers that a conformity assessment body of the other Party does not fulfill its requirements, it shall explain to the other Party in writing the reasons for its decision.

4. A Party shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures. Where a Party declines such request, it shall, upon request of the other Party, explain in writing the reasons for its decision. The Parties shall work togethe

Article 6.8. TRANSPARENCY

1. The Parties shall endeavor to comply with the decisions and recommendations of the TBT Committee of the WTO.

2. Each Party shall allow a period of at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures to WTO Central Registry of Notifications, to solicit comments from the other Party except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request of the other Party for extending the period for comments.

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

4. Each Party should take the comments of the other Party into due consideration, received prior to the end of the comment period following the notification of a proposed technical regulation, and shall endeavor to provide responses to these comments upon request.

5. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are promptly published or otherwise made available in such a manner as to enable interested persons of the other Party and the other Party to become acquainted with them.

6. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses, or a summary of its responses to significant comments received from the other Party, no later than the date it publishes the final technical regulation or conformity assessment procedure.

7. A Party shall give positive consideration to a reasonable request of the other Party, received prior to the end of the period for comments following the notification of a proposed technical regulation, for extending the period of time between the adoption of the technical regulation and its entry into force, except where this would be ineffective in fulfilling the legitimate objectives pursued.

8. Except in urgent circumstances, the Parties shall allow a reasonable interval (1) between the publication of technical regulations and their entry into force in order to allow time for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party.

(1) Reasonable interval shall be understood to normally mean a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued, in accordance with paragraph 5 of the Implementation–Related Issues and Concerns, Decision of November 14, 2001 (WT/MIN(01)/17).

Article 6.9. COOPERATION

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, conformity assessment

procedures, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. In particular, the Parties shall seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, conformity assessment procedures, that are appropriate for particular issues or sectors.

2. These initiatives may include, inter alia, cooperation on:

(a) regulatory issues, such as transparency, the promotion of good regulatory practices, alignment with international standards, use of accreditation to qualify conformity assessment bodies; and

(b) capacity building activities, aimed at improving technical infrastructure in conformity assessment (e.g. metrology, testing, certification, and accreditation).

3. Upon request, a Party shall give favorable consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

Article 6.10. MARKING AND LABELING

1. The Parties note the provision of paragraph 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labeling requirements, and agree that where their technical regulations contain mandatory marking or labeling, they will observe the principles of Article 2.2 of the TBT Agreement, that technical regulations should not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfill a legitimate objective.

2. In particular, the Parties agree that where a Party requires mandatory marking or labeling of products:

(a) the Party shall endeavor to minimize its requirements for marking or labeling other than marking or labeling relevant to consumers or users of the product. Where labeling for other purposes, for example, for fiscal purposes is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfill a legitimate objective;

(b) the Party may specify the form of markings or labels, but shall not require any prior approval, registration or certification in this regard; except where the Parties have specific marking or labeling in the light of the relevant regulation. The specific marking or labeling shall be confined to the risk of the products to human, animal or plant health or life, the environment, or national safety;

(c) where the Party requires the use of a unique identification number by economic operators, the Party shall issue such number to the economic operators of the other Party without undue delay and on a nondiscriminatory basis;

(d) the Party shall be able to require that the information on the marks or labels be in a specified language. Where there is an international system of nomenclature accepted by the Parties, this may also be used. The simultaneous use of other languages shall not be prohibited, provided that, either the information provided in the other languages shall be identical to that provided in the specified language, or that the information provided in the additional language shall not constitute a deceptive statement regarding the product; and

(e) the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby, endeavor to accept non-permanent or detachable labels, or marking or labeling in the accompanying documentation rather than physically attached to the product, according to its regulation.

Article 6.11. BORDER CONTROL AND MARKET SURVEILLANCE

1. The Parties undertake to:

(a) exchange information and experiences on their border control and market surveillance activities, except in those cases in which the documentation is confidential; and

(b) ensure that border control and market surveillance activities are undertaken by the competent authorities, to which end these authorities may use accredited, designated, or delegated bodies, avoiding conflicts of interest between those bodies and the economic agents subject to control or supervision.

2. Where a Party detains, at a port of entry, goods including testing samples for conformity assessment exported from the other Party due to a perceived failure to comply with a technical regulation or conformity assessment procedures, the reasons for the detention shall be promptly notified to the importer or his or her representative.

Article 6.12. COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee's functions shall include:

(a) working to facilitate the implementation between the Parties in all matters pertaining to this Chapter;

(b) monitoring the implementation, enforcement, and administration of this Chapter;

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

(d) enhancing cooperation between the Parties in the initiatives set out in Article 6.9;

(e) identifying priority sectors for enhanced cooperation, including giving favorable consideration to any proposal made by either Party;

(f) facilitating the process for the negotiation of a mutual recognition agreement;

(g) exchanging information, upon request of a Party, on standards, technical regulations, conformity assessment procedures, including activities developed in regional or international fora;

(h) reviewing this Chapter in light of any development under the TBT Committee and, if necessary, developing recommendations for amendments to this Chapter;

(i) establishing, if necessary to achieve the objectives of this Chapter, issuespecific or sector-specific ad-hoc working groups;

(j) considering, if necessary, upon request of a Party, establishing a subsidiary working group for technical discussion with the aim of seeking to address any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures. The meeting of such working group shall take place within a period agreed by the Parties and may be conducted by electronic means;

(k) reporting to the Joint Committee on the implementation of this Chapter; and

(l) carrying out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. The Committee shall meet upon request of a Party. Meetings may be conducted in person or by any technological means available to the Parties.

4. The authorities set out in Annex 6-A shall be responsible for coordinating with the relevant institutions and persons in their respective territories as well as for ensuring that such institutions and persons are engaged. The Committee shall carry out its work through the communication channels agreed by the Parties, which may include electronic mail, teleconferencing, videoconferencing, or other means.

Article 6.13. INFORMATION EXCHANGE

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be communicated in printed or electronic form or any other means acceptable to the Parties within a period of 60 days after the receipt of notification.

2. Nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which it considers is contrary to its essential security interests.

Chapter 7. TRADE REMEDIES

Section A. Safeguard Measures

Article 7.1. APPLICATION OF A BILATERAL SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of a Party is being imported into the territory of the other Party 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, the importing Party may (1):

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

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

(i) the MFN applied rate of duty on the good in effect at the time the measure is applied; and

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

(1) For greater certainty, only one bilateral safeguard measure may be imposed at a time.

Article 7.2. CONDITIONS AND LIMITATIONS

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party within 30 days after the initiation of the investigation, with a view to, among others, reviewing the information arising from the investigation and exchanging views on the measure. Consultations may be held in person or by any other communication means which adequately suffices the purpose of consultations.

2. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authority in accordance with Articles 3 and 4.2(c) of the Agreement on Implementation of Article VI of the GATT 1994, contained in Annex 1A to the WTO Agreement; (hereinafter referred to as the "Safeguards Agreement"), and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Articles 4.2(a) and 4.2(b) of the Safeguards Agreement, and to this end, Articles 4.2(a) and 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

4. A bilateral safeguard investigation may be initiated by the competent authority on its own initiative or upon a written application pursuant to the legislation of each Party.

5. Each Party shall ensure that its competent authority complete any such investigation within one year of its date of initiation.

6. Neither Party may apply a bilateral safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(b) for a period exceeding two years, except that the period may be extended by up to two years if the competent authority of the importing Party determine, in conformity with the procedures specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years; or

(c) beyond the expiration of the transition period, except with the consent of the other Party.

7. A Party shall not apply a bilateral safeguard measure again on the same good until a period of time equal to the duration of the previous bilateral safeguard measure, including any extension, has elapsed commencing from the termination of the previous bilateral safeguard measure, provided that the period of non-application is at least two years.

8. Where the expected duration of the bilateral safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

9. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to the Party´s Schedule included in Annex 2-B (Elimination of Customs Duties), would have been in effect but for the measure.

Article 7.3. PROVISIONAL MEASURES

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination by its competent authority that there is

clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. Before a Party's competent authority may make a preliminary determination, the Party shall publish a public notice in its official journal setting forth how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional bilateral safeguard measure, and shall provide interested parties at least 20 days after the date it publishes the notice to submit evidence and views regarding the application of a provisional measure. A Party may not apply a provisional measure until at least 45 days after the date its competent authority initiates an investigation.

3. The applying Party shall notify the other Party before applying a bilateral safeguard measure on a provisional basis and shall initiate consultations after applying the measure. Consultations may be held in person or by any other communication means which adequately suffices the purpose of consultations.

4. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 7.2.2 and 7.2.3. The duration of any provisional measure shall be counted as part of the period described in Article 7.2.6(b).

5. The Party shall promptly refund any tariff increases if the investigation described in Article 7.2.2 does not result in a finding that the requirements of Article 7.1 are met.

Article 7.4. COMPENSATION

1. No later than 30 days after a Party applies a bilateral safeguard measure, the Party shall afford an opportunity for the other Party to consult with it regarding appropriate 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 applying Party shall provide such compensation as the Parties mutually agree. Consultations may be held in person or by any other communication means which adequately suffices the purpose of consultations.

2. If the Parties are unable to agree on compensation through consultation under paragraph 1 within 30 days after consultations begin, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.

3. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions under paragraph 2 shall terminate on the date the bilateral safeguard measure terminates.

4. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

Article 7.5. PROCEDURAL RULES

For the application of bilateral safeguard measures, the competent authority shall comply with the provisions of this Section and in cases not covered by this Section, the competent authority may apply domestic procedural rules which are consistent with the Safeguards Agreement.

Article 7.6. GLOBAL SAFEGUARD MEASURES

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. Unless otherwise provided in this Article, this Agreement does not confer any additional rights or obligations on the Parties with regard to measures taken under Article XIX of GATT 1994 and the Safeguards Agreement.

2. At the request of the other Party, the Party intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings and the final findings of the investigation.

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

(a) a bilateral safeguard measure in accordance with Article 7.1; and

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

4. Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Section.

Section B. Anti-Dumping and Countervailing Duties

Article 7.7. GENERAL PROVISIONS

1. Except as otherwise provided for in this Chapter, the Parties retain their rights and obligations under Article VI of GATT 1994, the AD Agreement and the SCM Agreement.

2. The Parties agree that anti-dumping and countervailing duties should be used in

full compliance with the relevant WTO requirements and should be based on a fair and transparent system as regards proceedings affecting originating goods from the other Party. For these purposes, the Parties shall ensure, after any imposition of provisional measures and in any case before the final determination, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply definitive measures, without prejudice to Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to make their comments.

3. Provided that it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the opportunity to be heard in order to express their views during the anti-dumping or countervailing duty investigations.

Article 7.8. NOTIFICATION AND CONSULTATION

1. After receipt by a Party's competent authority of a properly documented antidumping application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification, at the earliest possible opportunity, to the other Party of its receipt of the application and afford the other Party consultations or other similar opportunities regarding the application, consistent with the laws of the Party. Consultations may be held in person or by any other communication means which adequately suffices the purpose of the consultations.

2. After receipt by a Party's competent authority of a properly documented countervailing duty application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting to consult with its competent authority regarding the application. Consultations may be held in person or by any other communication means which adequately suffices the purpose of the consultations.

Article 7.9. (2)

1. Where a Party's competent authority has made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration and adequate opportunity for consultations to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the laws and procedures of the Party.

2. Where a Party's competent authority has made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the Party shall afford due consideration, and adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price or, as appropriate, on quantity, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the laws and procedures of the Party.

(2) For greater certainty, this Article should be interpreted consistently with Article 8 (Price Undertakings) of the AD Agreement and Article 18 (Undertakings) of the SCM Agreement.

Article 7.10. LESSER DUTY RULE

Should a Party decide to impose an anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, and it is desirable that it should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

Article 7.11. CONSIDERATION OF PUBLIC INTERESTS

The Parties shall endeavor to consider the public interests before imposing an antidumping or countervailing duty.

Article 7.12. HEARING

Upon request of the interested parties, the Parties shall consider whether to hold a hearing in order to grant the opportunity of expressing their views during anti-dumping or countervailing measures investigations. This shall not unnecessarily delay the conduct of the investigations.

Article 7.13. INVESTIGATION AFTER TERMINATION RESULTING FROM A REVIEW

The Parties agree to examine carefully any application for initiation of an anti-dumping investigation on an originating good from the other Party and on which anti-dumping measures have been terminated in the previous 12 months as a result of a review.

Article 7.14. DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Section.

Section C. Definitions

Article 7.15. DEFINITIONS

For the purposes of this Chapter:

bilateral safeguard measure means a measure described in Article 7.1;

competent authority means:

(a) for Korea, the Korea Trade Commission or, the Ministry of Strategy and Finance;

(b) for Costa Rica, the Trade Remedies Directorate (Dirección de Defensa Comercial) of the Ministry on Economy, Industry and Commerce (Ministerio de Economía, Industria y Comercio);

(c) for El Salvador, the Trade Agreements Administration Bureau (Dirección de Administración de Tratados Comerciales) of the Ministry of Economy (Ministerio de Economía);

(d) for Honduras, the Directorate General of Administration and Negotiation of Agreements (Dirección General de Administración y Negociación de Tratados) of the Secretary of State in the Office of Economic Development (Secretaría de Estado en el Despacho de Desarrollo Económico);

(e) for Nicaragua, the Directorate of Application and Negotiation of Trade Agreements (Dirección de Aplicación y Negociación de Acuerdos Comerciales) of the Ministry of Development, Industry and Commerce (Ministerio de Fomento, Industria y Comercio); and

(f) for Panama, the National Directorate for International Trade Agreement Administration and Commercial Defense (Dirección Nacional de Administración de Tratados Comerciales Internacionales y Defensa Comercial) of the Ministry of Commerce and Industries (Ministerio de Comercio e Industrias), or their successors;

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

global safeguard measure means a measure applied under Article XIX of GATT 1994 and the Safeguards Agreement;

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

substantial cause means a cause that 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 10-year period following the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 2-B (Elimination of Customs Duties) of the Party applying the safeguard measure,

provides for the elimination of its tariffs on the good over a period of 10 or more years, transition period means the tariff elimination period for the good set out in that schedule plus three years.

Chapter 8. GOVERNMENT PROCUREMENT

Article 8.1. GENERAL PROVISIONS

1. The Parties recognize that this Chapter will contribute to expand bilateral trading opportunities in each Party's government procurement market.

2. The Parties recognize their shared interest in promoting the effective, reciprocal and progressive opening of government procurement markets. The Parties will endeavor to cooperate bilaterally on procurement matters.

Article 8.2. SCOPE

1. This Chapter shall apply to any measure of a Party regarding covered procurement.

2. For the purposes of this Chapter, covered procurement means a government procurement of goods, services or any combination thereof for governmental purposes:

(a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

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

(c) for which the value, as estimated in accordance with paragraphs 5 and 6 equals or exceeds the relevant threshold specified by each Party in Annex 8-A at the time of publication of a notice in accordance with Article 8.6;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage by this Chapter; and subject to the conditions specified in Annex 8-A.

3. This Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;

(b) non-contractual agreements or any form of assistance (1) that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, subsidies, government provision of goods and services to state, regional, or local government entities;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts and related measures;

(e) procurement conducted:

(i) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(ii) under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter; and

(f) procurement for the specific purpose of providing international assistance, including development aid.

4. Where legislation of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons not listed in the Annex 8-A, the provisions of the Article 8. 4 shall equally apply, mutatis mutandis.

Valuation of Contracts

5. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor use a particular valuation method for estimating the value

of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, and interest; and

(ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

6. Where the estimated maximum total value of a procurement over its entire duration is not known, the procurement shall be covered by this Chapter.

(1) For greater certainty, this Chapter shall not apply to a procurement in furtherance of human feeding programs.

Article 8.3. EXCEPTIONS

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

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

Article 8.4. GENERAL PRINCIPLES

National Treatment and Non-Discrimination

1. With respect to any measure covered by this Chapter, each Party, including its procuring entities, shall accord to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than that accorded to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(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.

Measures Not Specific to Procurement

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

Use of Electronic Means

4. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally

available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Prohibition of Offsets

5. Subject to the exceptions contained in this Chapter or the annexes pertaining thereto, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a covered procurement.

Rules of Origin

6. For the purposes of covered procurement, each Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services.

Conduct of Procurement

7. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Article 8.5. PUBLICATION OF PROCUREMENT INFORMATION AND MEASURES

Each Party shall promptly publish its procurement laws, regulations, procedures, administrative rulings of general application relating to covered procurements, and any changes or additions to this information, in electronic or paper media that are widely disseminated and remain accessible to the public, and provide, if so requested by the other Party further information concerning their application.

Article 8.6. NOTICES

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 8.11, a procuring entity shall publish a notice inviting interested suppliers to submit tenders or, where appropriate, applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public free of charge for the entire period established for tendering. Each Party shall encourage procuring entities to publish notices of intended procurement in a single point of entry electronic publication that is accessible through the Internet or a comparable network.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact such entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(d) where applicable, the address and any final date for the submission of requests for participation in the procurement; and

(e) the address and the final date for the submission of tenders.

3. The following information shall be made available through electronic means:

(a) for recurring contracts, if possible, an estimate of the timing of subsequent notices of intended procurement;

(b) a description of any options;

(c) the time-frame for delivery of goods or services or the duration of the contract;

(d) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(e) where, pursuant to Article 8.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(f) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

4. Each Party shall encourage its procuring entities to publish as early as possible in each Party's fiscal year, a notice regarding their procurement plans for that fiscal year. The notice should, at a minimum, include the subject-matter of the procurement and the planned date of the publication of the notice of the intended procurement according to the legislation of each Party.

Article 8.7. CONDITIONS FOR PARTICIPATION

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal, commercial, technical and financial capacities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial, commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(b) shall base its evaluation solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;

(c) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and

(d) may require prior experience where essential to meet the requirements of the procurement.

3. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct, acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 8.8. REGISTRATION AND QUALIFICATION OF SUPPLIERS

Registration Systems and Qualification Procedures

1. Where a Party, including its procuring entities, requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement, that Party, including its procuring entities, shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration and/or qualification procedures.

Selective Tendering

2. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended

procurement:

(a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on such applications; and

(b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Lists of Suppliers

3. A procuring entity may establish a list of suppliers, provided that the entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. A notice inviting suppliers to apply for inclusion in a list of suppliers, shall include the name and address of that competent or procuring entity and other information necessary to contact the entity and obtain all relevant information and document relating to inclusion in the list. Entities shall make available:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of those conditions; and

(c) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

4. A procuring entity shall allow suppliers to apply at any time for inclusion on a list of suppliers and shall include on the list all qualified suppliers within a reasonably short time.

5. Where a supplier that is not included on a list of suppliers submits a request for participation in a procurement based on a list of suppliers and all required documents relating thereto, within the time-period provided for in Article 8.9, a procuring entity shall examine the request if it is determined to be a qualifying supplier, provided there is sufficient time to fulfill the conditions for participation, unless, in exceptional cases, due to the complexity of the procurement, that entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

Article 8.9. TIME PERIODS

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a covered procurement, and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

2. If a procuring entity that uses selective tendering establishes a final date for the submission of requests for participation, it shall set a reasonable deadline allowing sufficient time for interested suppliers to fulfil the formal requirements for participation in the tender. Under no circumstance shall this time-period be less than 10 days.

3. Except as provided for in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders whether or not it uses a list of suppliers.

4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to not less than 10 days where:

(a) the procuring entity has published a notice in an electronic medium listed in Annex 8-C, containing the information specified in Article 8.6.4 at least 40 days and not more than 12 months in advance;

(b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;

(c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable; or

(d) a procuring entity procures commercial goods and services that are sold or offered for sale to, and customarily purchased and used by, nongovernmental buyers for non-governmental purposes.

5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the tenders may be received by electronic means by the procuring entity.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

Article 8.10. INFORMATION ON INTENDED PROCUREMENTS

Tender Documentation

1. A procuring entity shall promptly provide to any supplier interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders.

2. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where a procuring entity may hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(e) where there will be a public opening of tenders, the date, time, and place for the opening of tenders, where appropriate, the persons authorized to be present;

(f) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g., paper or electronic means; and

(g) any dates for the delivery of goods or the supply of services.

3. A procuring entity shall promptly reply to any reasonable request for relevant information made by any interested or participating supplier in the procurement, provided that such information does not give that supplier an advantage over other suppliers and that the request was presented within the corresponding time periods.

4. If the legislation of a Party conducting a tendering procedure allows tenders to be submitted in several languages, one of those languages shall be English.

Technical Specifications

5. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade between the Parties.

6. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, where such exist; otherwise, on national technical regulations, recognised national standards or building codes.

7. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

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

9. 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 the procurement.

10. For greater certainty, a procuring entity may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Modifications

11. Where, in the course of a procurement, a procuring entity modifies the criteria or technical requirements set out in a notice of intended procurement or tender documentation provided to participating suppliers or amends or reissues a notice or tender documentation according to the legislation of each Party, it shall transmit in writing all such modifications or amended or reissued notice or tender documentation:

(a) to all the suppliers that are participating at the time of the modification, amendment, or reissuance if the identities of such suppliers are known, and, in all other cases, in the same manner that the original information was transmitted; and

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

Article 8.11. LIMITED TENDERING

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

(a) provided that the requirements of the tender documentation are not substantially modified where:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of intellectual property rights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where:

(i) a change of supplier for such additional goods or services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) such separation would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) 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. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;

(h) where additional construction services that were not included in the initial contract, but fell under the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein; and

(i) in the cases established by each Party in Annex 8-A.

2. For each contract awarded under paragraph 1, a procuring entity shall maintain records or prepare a written report that includes:

(a) the name of the procuring entity;

(b) the value and kind of goods or services procured; and

(c) a statement indicating the circumstances and conditions described in paragraph 1 that justify the use of limited tendering

Article 8.12. ELECTRONIC AUCTIONS

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity may provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article 8.13. NEGOTIATION

1. A Party may provide for its procuring entities to conduct negotiations, where:

(a) the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 8.6; or

(b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 8.14. TREATMENT OF TENDERS AND AWARDING OF CONTRACTS

Receipt and Opening of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality

of the procurement process.

2. A procuring entity shall treat all tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. According with the legislation of a Party, a procuring entity shall receive a tender after the time specified for receiving tenders if the delay is due solely to an event unforeseen by the procuring entity.

4. Where a procuring entity provides suppliers with opportunities to correct errors of form, the entity shall provide the same opportunities to all participating suppliers.

Awarding of Contracts

5. A procuring entity shall require that in order to be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

6. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that it has determined to be

capable of fulfilling the term of the contract and, based solely on the evaluation criteria

specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

7. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

8. A procuring entity may not cancel a covered procurement, or terminate or modify awarded contracts in a manner that circumvents this Chapter.

Article 8.15. POST-AWARD INFORMATION

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. A procuring entity shall, upon request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

2. After the award of each contract covered by this Chapter, a procuring entity shall as early as possible, according to the time limit established in each Party´s legislation publish a notice in the appropriate paper or electronic medium listed in Annex 8-C. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name of the successful supplier;

(d) the value of the successful tender;

(e) the date of award or the contract date; and

(f) the type of procurement method used and in cases where limited tendering was used in accordance with Article 8.11, a description of the circumstances justifying the use of limited tendering, which may be made available in the corresponding files or electronic media.

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) records and reports of tendering procedures and contract awards relating to covered procurement, including the records or reports required under Article 8.11; and

(b) where the procuring entity conducts procurement entirely by electronic means, data that ensure the appropriate

traceability of the conduct of covered procurement.

Article 8.16. DOMESTIC REVIEW PROCEDURES

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may present a challenge with respect to the obligations of a Party and its entities under this Chapter that may arise in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

3. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, complaints that a supplier of a Party submits, in accordance with the Party's law, relating to a covered procurement.

4. Where a body other than an authority referred to in paragraph 3 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

5. A review body that is not a court shall either be subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as the "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) decisions or recommendations relating to supplier challenges shall be provided to interested supplier, within a reasonable time, in writing, with an explanation of the basis for each decision or recommendation.

6. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) corrective action or compensation for the loss or damages suffered, in accordance with each Party's legislation, in cases where a review body has determined that there has been a breach or a failure as set out in paragraph 1.

Article 8.17. MICRO, SMALL, AND MEDIUM ENTERPRISES' PARTICIPATION

1. The Parties recognize the importance of the participation of micro, small, and medium-sized enterprises (hereinafter referred to as the "MSMEs") in government procurement and of business alliances between suppliers of each Party, and in particular of MSMEs, including the joint participation in tendering procedures.

2. The Parties shall be able to adopt, develop, maintain or implement measures to promote opportunities on procurement policies for the development of its MSMEs; including preferential rules.

Article 8.18. COOPERATION AND TECHNICAL ASSISTANCE ON GOVERNMENT PROCUREMENT

1. The Parties agree that it is in their common interest to promote cooperation and technical assistance initiatives on issues related to government procurement.

2. The Parties shall endeavour to cooperate in matters such as:

(a) exchange of experiences and information, such as regulatory frameworks and best practices in the fields of sustainable procurement and innovation procurement;

(b) capacity building and technical assistance to suppliers with respect to access to the government procurement market;

(c) knowledge and technology transfer for procurement entities in order to improve institutional capabilities; and

(d) improving processes for electronic procurement.

Article 8.19. RECTIFICATIONS AND MODIFICATIONS TO COVERAGE

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex 8-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of receipt of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.

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

(a) notifies the other Party in writing and simultaneously offers in the notification appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification where necessary; and

(b) the other Party shall not object in writing within 30 days of receipt of the notification.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party shall object in writing within 30 days of receipt of the notification and 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. Where the Parties concerned have agreed on rectification, minor amendment, adjustment or proposed modification, or where no objection has been made within 30 days of the receipt of the notification, the modifications shall be made in conformity with the provisions of paragraph 5.

5. The Joint Committee of the Agreement shall modify the relevant section of Annex 8-A to reflect any agreed rectification, minor amendment or modification.

Article 8.20. COMMITTEE ON GOVERNMENT PROCUREMENT

1. The Parties hereby establish a Committee on Government Procurement (hereinafter referred to as the "Committee") comprising representatives of each Party.

2. The Committee shall:

(a) evaluate the implementation of this Chapter, including its application, and recommend to the Parties the appropriate activities;

(b) coordinate the cooperation activities;

(c) evaluate and follow up the activities related to cooperation that the Parties present;

(d) work as an enquiry point for the purposes of the notifications under Article 8.19; and

(e) carry out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. The Committee shall meet upon request of a Party or as mutually agreed by the Parties.

4. Meetings may be conducted in person or by any technological means available to the Parties.

Article 8.21. DEFINITIONS

For the purposes of this Chapter:

conditions for participation means registration, qualification, or other pre-requisites for participation in a procurement;

construction services means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification;

electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable nonprice elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders; (2)

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

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

list of suppliers means a list that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

measure means any law, regulation, procedure, administrative guidance, practice or act of a procuring entity relating to a covered procurement;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

offset means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

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

person means a natural person or a juridical person;

procuring entity means an entity covered under a Party's Annex 8-A;

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

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

services includes construction services, unless otherwise specified;

standard means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;
supplier means a person or group of persons that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

(a) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

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

(2) The definition of electronic auction shall not apply between Korea and Panama, until it is reviewed and agreed in the Committee.

Chapter 9. Investment

Section A. Investment

Article 9.1. Scope

1. This Chapter shall apply 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 9.9 and 9.11, all investments in the territory of the Party.

2. For greater certainty, this Chapter does not bind either 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.

3. For the purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central or local governments and authorities; and

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

4. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).

5. This Chapter shall not apply to services supplied in the exercise of governmental authority in a Party's territory. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article 9.2. 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 shall apply 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.

Article 9.3. 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.

Article 9.4. MOST-FAVORED-NATION TREATMENT (1)

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.

(1) For greater certainty, Article 9.4 shall not apply to investor-state dispute settlement mechanisms such as those set out in Section B or that are provided for in an international treaty or trade agreement.

Article 9.5. MINIMUM STANDARD OF TREATMENT (2)

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.

(2) Article 9.5 shall be interpreted in accordance with Annex 9-A.

Article 9.6. LOSSES AND COMPENSATION

1. Notwithstanding Article 9.13.5(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 for such loss, which in either case shall be in accordance with customary international law and with respect to compensation shall be prompt, adequate, and effective in accordance with Articles 9.7.2 through 9.7.4, mutatis mutandis.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9.3 but for Article 9.13.5(b).

Article 9.7. EXPROPRIATION AND COMPENSATION (3)

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; (4)

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 9.5.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without undue 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 referred to in paragraph 1(c) 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 referred to in paragraph

1(c) – 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 shall 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 15 (Intellectual Property Rights). (5)

(4) Article 9.7.1(a) shall be interpreted in accordance with Annex 9-B, with regard to the Republics of Central America.

(5) For greater certainty, the reference to "the TRIPS Agreement" in paragraph 5 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

Article 9.8. 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, including the initial contribution;

(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 Articles 9.6.1, 9.6.2 and 9.7; 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, 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) 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 9.9. PERFORMANCE REQUIREMENTS

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

or enforce any commitment or undertaking: (6)

(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 nonParty, 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) shall not apply when:

(i) 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; (7); or

(ii) 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. (8)

(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), shall 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), shall not apply to government procurement.

(f) Paragraphs 2(a) and (b) shall 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 shall 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.

(6) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 shall not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(7) 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.

(8) The Parties recognize that a patent does not necessarily confer market power.

Article 9.10. 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 9.11. 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 9.12. 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 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. 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. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits under this paragraph. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

Article 9.13. NON-CONFORMING MEASURES

1. Articles 9.3, 9.4, 9.9, and 9.10 shall 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, or

(ii) 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 9.3, 9.4, 9.9, or 9.10.

2. Articles 9.3, 9.4, 9.9, and 9.10 shall 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 9.3 and 9.4 shall not apply to any measure that is an exception to, or derogation from, the obligations under Article 15.7 (General Provisions) as specifically provided in that Article.

5. Articles 9.3, 9.4, and 9.10 shall not apply to:

(a) government procurement; or

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

Article 9.14. SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 9.3 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 covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 9.3 and 9.4, 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. A Party shall only request confidential information if allowed by its legislation. 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.

Article 9.15. SUBROGATION

1. Where a Party or a designated agency of a Party makes a payment to any of its investors under a guarantee, a contract of insurance, or other form of indemnity, against non-commercial risks it has granted in respect of an investment of an investor of that Party, the other Party shall recognize the subrogation of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not exceed the original investor´s right or claim.

2. Where a Party or the agency authorized by that Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party or agency authorized by the Party making the payment, pursue those rights and claims against the other Party.

Section B. Investor-State Dispute Settlement

Article 9.16. CONSULTATION AND NEGOTIATION

Any dispute arising in accordance with Article 9.17.1 shall be settled, to the extent possible, by consultation and negotiation, which may include the use of non-binding, third party procedures such as conciliation and mediation, and shall be notified by submitting a notice of the dispute (notice of dispute) in writing, including detailed information of the factual and legal basis, by the investor to the Party receiving the investment. The claimant must deliver evidence, establishing that he or she is an investor of the other Party with its notice of dispute.

Article 9.17. 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 in accordance with Article 9.16 within eight months, which may be extended if the disputing parties so agree:

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

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

(ii) the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim that:

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

(ii) the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party may not, under this Section, submit a claim to arbitration, concerning the breach of the other Party's obligations under Articles 9.2, 9.11 and 9.14.1.

3. 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 Section A 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.

4. If the dispute has not been settled within the period referred to in paragraph 1, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedure 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;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

Once the investor has alleged a breach of an obligation under Section A in any proceedings before a competent court or administrative tribunal of the Party in whose territory the investment has been admitted, or in any of the arbitration mechanisms set out in this paragraph, the choice of the proceeding shall be final and the investor shall not submit the dispute to a different forum.

5. 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;

(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; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d), is received by the respondent.

A claim asserted by the claimant 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.

6. The arbitration rules applicable under paragraph 4, 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.

7. The Parties shall refrain from pursuing through diplomatic channels matters related to disputes between a Party and an investor of the other Party, submitted to court proceedings or international arbitration in accordance with the provisions of this Section.

8. 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 that arbitrator.

Article 9.18. 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 (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing".

Article 9.19. 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 the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.17.1 and knowledge that the claimant (for claims brought under Article 9.17.1(a)) or the enterprise (for claims brought under Article 9.17.1(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 9.17.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 9.17.1(b), by the claimant's and the enterprise's written waivers of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.17.

3. The claimant (for claims brought under Article 9.17.1(a)) and the claimant or the enterprise (for claims brought under Article 9.17.1(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.

Article 9.20. 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 90 days of the date 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, after consulting the disputing parties, the arbitrator or arbitrators not yet appointed. The Secretary General shall not appoint a national of either Party as the presiding arbitrator.

4. For the 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 9.17.1(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 9.17.1(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.

5. The arbitrators shall:

(a) have experience or expertise in public international law, international investment rules, or in dispute settlement derived from international investment agreements; and

(b) be independent from the Parties and the claimant, and not be affiliated with or receive instructions from any of them.

Article 9.21. CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 9.17.4. 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. On the request of a disputing party, the nondisputing Party should resubmit its oral submission in writing.

3. After consulting the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written amicus curiae submission according to the Annex 9-G with the tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

(a) the amicus curiae submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;

(b) the amicus curiae submission would address a matter within the scope of the dispute; and

(c) the amicus curiae has a significant interest in the proceeding. The tribunal shall ensure that the amicus curiae submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the amicus curiae submission.

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 9.27.

(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 of the date 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, or 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, except with respect to any subrogation as provided for in Article 9.15.

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

9. 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 date the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award no later than 45 days after the date the 60-day comment period expires.

10. The Parties by mutual agreement may consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 9.27.

Article 9.22. TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 2, 3, 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 Articles 9.21.2, 9.21.3 and 9.26;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as 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 23.2 (Essential Security) or Article 23.4 (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 time 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 by a disputing party 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 9.23. GOVERNING LAW

1. Subject to paragraph 2, when a claim is submitted under Article 9.17.1(a)(i) or Article 9.17.1(b)(i), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 21.1 (Joint Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 9.24. INTERPRETATION OF ANNEXES

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 21.1 (Joint Committee) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Joint Committee 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 Joint Committee fails to issue such a decision within 90 days, the tribunal shall decide the issue.

Article 9.25. EXPERT REPORTS

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, the 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 9.26. CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under Article 9.17.1 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 9.17.1 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 9.20 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 9.17.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 9.20 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 9.20 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 9.27. AWARDS

1. The tribunal, in its final award shall set out its findings of law and fact, together with the reasons for its ruling. Where a tribunal makes a final award against a respondent, the tribunal may, provided that it does not exceed the request of the claimant, award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(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.

2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. Subject to paragraph 1, where a claim is submitted to arbitration under Article 9.17.1(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.

4. A tribunal is not authorized to award punitive damages.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. Subject to paragraph 7 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

7. 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, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 9.17.4(d),

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

8. Each Party shall provide for the enforcement of an award in its territory.

9. 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 22.7 (Establishment of 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 22.10 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

10. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 9.

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

Article 9.28. SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 9-D.

Section C. Definitions

Article 9.29. DEFINITIONS

For the purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSIDestablished 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 1.6 (Definitions), 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;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

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; (9) (10)

(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 the law

of the Party; (11) (12) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges. (13)

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 (14) 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 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; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, as revised in 2010 or as subsequently agreed between the Parties.

(9) 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.

(10) For the purposes of this Agreement, claims to payment that are immediately due and result from the sale of goods or services are not investments.

(11) 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 the law of the Party. 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.

(12) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(13) For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

(14) For greater certainty, it is understood that an investor "attempts to make an investment" only when the investor has taken concrete steps necessary to make the said investment, such as when the investor has duly filed an application for a permit or a license required to make an investment or has obtained the financing providing it with the funds to set up the investment.

Section D. Termination of Bilateral Investment Treaties

Article 9.30. TERMINATION OF BILATERAL INVESTMENT TREATIES

1. Subject to paragraph 2, as of the entry into force of this Agreement between the Republic of Korea and each of the Republics of Central America, the Parties hereby agree that the following Agreements for the Promotion and Protection of Investment (hereinafter referred to as the "Investment Promotion and Protection Agreements"), as well as all the rights and obligations derived from the Investment Promotion and Protection Agreements, will cease to have effect:

(a) Agreement between the Government of the Republic of Korea and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments, signed in San José on August 11th, 2000 and entered into force on August 25th, 2002.

(b) Agreement between the Government of the Republic of Korea and the Government of the Republic of El Salvador for the Reciprocal Promotion and Protection of Investments, signed in Seoul, on July 6th, 1998 and entered into force on May 25th, 2002.

(c) Agreement between the Government of the Republic of Korea and the Government of the Republic of Honduras for the Promotion and Protection of Investments, signed in Tegucigalpa on October 24th, 2000 and entered into force on July 19th, 2001.

(d) Agreement between the Government of the Republic of Korea and the Government of the Republic of Nicaragua for the Promotion and Protection of Investments, signed on May 15th, 2000 and entered into force on June 22th, 2001.

(e) Agreement between the Government of the Republic of Korea and the Government of the Republic of Panama for the Promotion and Protection of Investments, signed in Seoul on July 10th, 2001 and entered into force on February 8, 2002.

2. Regarding claims made while the Investments Promotion and Protection Agreement was in force, any and all investments made pursuant to the Investment Promotion and Protection Agreement will be governed by the rules and procedures of the applicable Investment Promotion and Protection Agreement. An investor may only submit an arbitration claim pursuant to the Investment Promotion and Protection Agreement, regarding any matter arising while the Investment Promotion and Protection Agreement was in force, in accordance with the rules and procedures established in it, and provided that no more than three years have elapsed since the date of entry into force of this Agreement.

Annex 9-A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Articles 9.5 and 9.6, and Annex 9-C results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 9.5, 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 9-B. PUBLIC PURPOSE

For the effects of Article 9.7.1 (a), “public purpose” shall be understood as:

(a) for Costa Rica: public utility or public interest;

(b) for El Salvador: public utility or social interest;

(c) for Honduras: public purpose or public interest;

(d) for Nicaragua: public utility or social interest; and

(e) for Panama: the concept of public purpose includes public order or social interest.

Annex 9-C. EXPROPRIATION

The Parties confirm their shared understanding that:

1. Article 9.7.1 is intended to reflect customary international law set out in Annex 9-A concerning the obligations 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 in an investment.

3. Article 9.7.1 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 9.7.1 is indirect expropriation, where an action or a 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 a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-bycase, fact-based inquiry that considers all relevant factors relating to the investment, including:

(i) the economic impact of the government action, although the fact that an action or a 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; (15) and

(iii) the character of the government action, including its objectives and context. (16)

(b) Except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment do not constitute indirect expropriations. (17)

Annex 9-D. SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

Korea

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

Office of International Legal Affairs

Ministry of Justice of the Republic of Korea

Government Complex, Gwacheon

Korea.

Costa Rica

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

General Directorate of Foreign Trade (Dirección General de Comercio Exterior)

Ministry of Foreign Trade (Ministerio de Comercio Exterior)

Plaza Tempo, Escazú,

San José, Costa Rica.

El Salvador

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

The Trade Administration Bureau (Dirección de Administración de Tratados Comerciales)

Ministry of Economy (Ministerio de Economía)

Alameda Juan Pablo II y Calle Guadalupe,

Edificio C1- C2, Plan Maestro, Centro de Gobierno,

San Salvador, El Salvador.

Honduras

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

General Directorate of Administration and Negotiation of Agreements (Dirección General de Administración y Negociación de Tratados)

Secretariat of State in the Office of Economic Development (Tercer Nivel de la Secretaría de Estado en el Despacho de Desarrollo Económico)

Colonia Humuya, Edificio San José, sobre el Boulevard José Cecilio del Valle,

Tegucigalpa, Honduras.

Nicaragua

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

General Directorate of Foreign Trade (Dirección General de Comercio Exterior)

Ministry of Development, Industry and Trade (Ministerio de Fomento Industria y Comercio)

Km. 6, Carretera a Masaya,

Managua, Nicaragua.

Panama

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

National Directorate for the Administration of International Trade Agreements and Trade Defense (Dirección Nacional de Administración de Tratados Internacionales y Defensa Comercial)

Ministry of Commerce and Industries (Ministerio de Comercio e Industrias)

Plaza Edison, Segundo Piso,

Avenida Ricardo J. Alfaro y Vía El Paical,

Panamá, República de Panamá.

Annex 9-E. TAXATION AND EXPROPRIATION

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 9-B and the following considerations:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) a taxation measure that is consistent with internationally recognized tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

(d) a taxation measure does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

Annex 9-F. TRANSFERS

1. Nothing in this Chapter, Chapter 10 (Cross-Border Trade in Services), or Chapter 11 (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures pursuant to the Party's laws and regulations with regard to payments and capital movements:

(a) in the event of serious balance of payments and external financial difficulties or under threat thereof; or

(b) in cases where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary or exchange rate policies in the Party concerned.

2. The measures referred to in paragraph 1 shall:

(a) be in effect for a period not to exceed one year; however, if extremely exceptional circumstances arise such that the Party seeks to extend such measures, such Party will coordinate in advance with the other Party concerning the implementation of any proposed extension; (18)

(b) not constitute a dual or multiple exchange rate practice except as prescribed by the Articles of Agreement of the International Monetary Fund;

(c) avoid unnecessary damage to the commercial, economic, or financial interests of the other Party;

(d) be temporary and phased out progressively as the situation calling for imposition of such measures improves;

(e) be applied on a national treatment basis and MFN Treatment basis;

(f) be promptly notified to the other Party;

(g) not exceed those necessary to deal with the circumstances described in paragraph 1;

(h) be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended; and

(i) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund.

Annex 9-G. AMICUS CURIAE

The Tribunal may receive amicus curiae briefs from interested natural persons of a Party or legal persons, established in the territory of the Parties.

1. The briefs submitted to the Tribunal shall:

(a) be dated and signed by the interested person or its representative, and include the contact information of such person;

(b) be addressed to the chair person and shall be also communicated to the disputing parties in the language or languages chosen by the disputing parties; and

(c) be concise and in no case exceed 15 typed pages, including any annexes.

2. The briefs shall be accompanied by a written declaration clearly indicating

(a) a description of the interested persons who present them, including their place of incorporation in case of legal persons and address in case of natural persons, the nature of their activities, their sources of financing and, where relevant, documentation corroborating said information;

(b) whether the interested persons have any direct or indirect relation with any of the disputing parties as well as if they

have received any financial or other type of contribution from any of the disputing parties, another government, natural persons or legal persons, generally or in the preparation of the brief; and

(c) a brief summary of how the interested persons brief would assist the tribunal in the determination of a factual or legal issue related to the proceeding.

3. The Tribunal shall not consider amicus curiae briefs which do not conform to the above rules.

Chapter 10. CROSS-BORDER TRADE IN SERVICES

Article 10.1. SCOPE

1. This Chapter shall apply 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 the purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central or local governments and authorities; and

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

3. Notwithstanding paragraph 1, Articles 10.4, 10.7 and 10.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment. (1)

4. This Chapter shall not apply to:

(a) financial services as defined in Article 11.20 (Definitions), except as provided in paragraph 3;

(b) government procurement;

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

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

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

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

(iii) computer reservation system (CRS) services.

5. This Chapter shall 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 shall not confer any right on that national with respect to that access or employment.

6. This Chapter shall not apply to services supplied in the exercise of governmental authority. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

(1) For greater certainty, the scope of Articles 10.4, 10.7, and 10.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in Article 10.1, subject to any applicable non-conforming measures and exceptions. Nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter 9 (Investment).

Article 10.2. NATIONAL TREATMENT

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.

Article 10.3. 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 10.4. MOST-FAVORED-NATION TREATMENT

Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

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

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (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) Sub-subparagraph (iii) does not cover measures of a Party which limit inputs for the supply of services.

Article 10.5. 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 10.6. NON-CONFORMING MEASURES

1. Articles 10.2, 10.3, 10.4, and 10.5 shall 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; or

(ii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.2, 10.3, 10.4 and 10.5.

2. Articles 10.2, 10.3, 10.4 and 10.5 shall 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.

Article 10.7. 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 a Party adopts or maintains with respect to sectors, subsectors or activities as set out in its Schedule to Annex II.

2. While recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, and with a view to ensuring that measures related 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 such measures 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 GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations among the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

Article 10.8. TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS (3)

Further to Chapter 18 (Transparency):

(a) each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations related to the subject matter of this Chapter; and

(b) to the extent possible, each Party shall allow reasonable time between publication of final regulations related to the subject matter of this Chapter and their effective date.

(3) For greater certainty, regulations includes regulations establishing or applying to licensing authorization or criteria.

Article 10.9. 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 upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 10.3 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 among 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.

Article 10.10. TRANSFERS AND PAYMENTS

1. Each Party shall permit all transfers and payments related 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 related 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 or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws related 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 offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.11. DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a nonParty, and the denying Party 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. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party. The denying Party shall, to the maximum extent possible, notify the other Party before denying the benefits under this paragraph. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

Article 10.12. DEFINITIONS

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

computer reservation system services (CRS) means services provided by computerized systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;

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 a covered investment;

enterprise means an "enterprise" as defined in Article 1.6 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise organized or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services, including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and

service supplier of a Party means a person of that Party that seeks to supply or supplies a service. (4)

(4) For the purposes of Articles 10.2 and 10.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of GATS.

Chapter 11. FINANCIAL SERVICES

Article 11.1. SCOPE

1. This Chapter shall apply 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 9 (Investment) and 10 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that these Chapters or Articles of these Chapters are incorporated into this Chapter.

(a) Articles 9.7 (Expropriation and Compensation), 9.8 (Transfers), 9.11 (Investment and Environment), 9.12 (Denial of Benefits), 9.14 (Special Formalities and Information Requirements), and 10.11 (Denial of Benefits) are hereby incorporated into and made part of this Chapter.

(b) Section B (Investor-State Dispute Settlement) of Chapter 9 (Investment) is hereby incorporated into and made part of this Chapter solely for claims that a Party has breached Article 9.7 (Expropriation and Compensation), 9.8 (Transfers), 9.12 (Denial of Benefits), or 9.14 (Special Formalities and Information Requirements) as incorporated into this Chapter.

(c) Article 10.10 (Transfers and Payments) is incorporated into and made part of this Chapter to the extent that cross-border trade in financial services is subject to obligations under Article 11.5.

3. This Chapter shall 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 that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

Article 11.2. 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 the purposes of the national treatment obligations in Article 11.5.1, 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 11.3. MOST-FAVORED-NATION TREATMENT

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less 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.

Article 11.4. MARKET ACCESS FOR FINANCIAL INSTITUTIONS

1. A Party shall not adopt or maintain, with respect to financial institutions of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations 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; (1) 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.

2. For the purposes of this Article, financial institutions of the other Party includes financial institutions that investors of the other Party seek to establish in the territory of the Party.

(1) This subparagraph shall not cover measures of a Party which limit inputs for the supply of financial services.

Article 11.5. CROSS-BORDER TRADE

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 11-A.

2. Each Party shall permit persons located in its territory and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for the 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 11.6. (2)

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 11.4(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 a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorization and the authorization may be refused only for prudential reasons.

(2) The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorize the supply of a financial service that is supplied in neither Party’s territory. Such 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 this Article.

Article 11.7. 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 11.8. 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 11.9. NON-CONFORMING MEASURES

1. Articles 11.2 through 11.5 and 11.8 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in Section A of its Schedule set out in Annex III; or

(ii) 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 11.2, 11.3, 11.4, or 11.8. (3)

2. Articles 11.2 through 11.5 and 11.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by the Party in Section B of its Schedule set out in Annex III. (4)

3. A non-conforming measure set out in an entry in a Party's Schedule set out in Annex I or II as not subject to Article 9.3 (National Treatment), 9.4 (Most-FavoredNation Treatment), 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment) or

10.4 (Market Access), shall be treated as a non-conforming measure not subject to Article 11.2, 11.3 or 11.4, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the entry is covered by this Chapter.

(3) For greater certainty, Article 11.5 shall apply to an amendment to any non-conforming measure referred to in subparagraph (a) only to the extent that the amendment decreases the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 11.5.

(4) For Nicaragua and Panama, Section B of Annex III shall not apply.

Article 11.10. EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapters 9 (Investment), 13 (Telecommunications), including specifically Article 13.22 (Relation to Other Chapters), or 14 (Electronic Commerce), and, in addition, Article 10.1.3 (Scope) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons (5), including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters 9 (Investment), 13 (Telecommunications), including specifically Article 13.22 (Relation to Other Chapters), or 14 (Electronic Commerce), and, in addition, Article 10.1.3 (Scope) with respect to the supply of financial services in the territory of a Party by a covered investment, shall apply to nondiscriminatory 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 9.9 (Performance Requirements) with respect to measures covered by Chapter 9 (Investment) or under Article 9.8 (Transfers) or 10.10 (Transfers and Payments).

3. Notwithstanding Articles 9.8 (Transfers) and 10.10 (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, nondiscriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or crossborder 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 a Party from adopting or enforcing 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.

(5) 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 11.11. 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 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 promoting regulatory transparency in financial services.

2. In lieu of Article 18.1.2 (Publication), each Party, to the extent practicable:

(a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulation; and

(b) shall provide interested persons and the other Party a reasonable opportunity to comment (6) on such 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 of general application 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 establish or maintain 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 publicly available 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.

10. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

Article 11.12. 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 11.13. SELF-REGULATORY ORGANIZATIONS

When 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 the territory of that Party, the Party shall ensure that the self-regulatory organization observes the obligations of Articles 11.2 and 11.3.

Article 11.14. 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 Article is not intended to confer access to the Party's lender of last resort facilities.

Article 11.15. RECOGNITION

1. 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 autonomously;

(b) achieved through harmonization or other means; or

(c) based on an agreement or arrangement with the non-Party.

2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 11.16. FINANCIAL SERVICES COMMITTEE

1. The Parties hereby establish a Financial Services Committee (hereinafter referred to as the "Committee"). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 11-B.

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;

(c) participate in the dispute settlement procedures in accordance with Article11.19; and

(d) carry out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. Unless the Parties otherwise agree, the Committee shall meet annually, to assess the functioning of this Agreement as it applies to financial services. Meetings may be conducted in person or by any technological means available to the Parties. The Committee shall inform the Joint Committee of the results of each of its meetings.

Article 11.17. 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 11-B.

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 11.18. DISPUTE SETTLEMENT

1. Section A (Dispute Settlement) of Chapter 22 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 22.7 (Establishment of Panel) 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 22.7.12 (Establishment of a Panel); and

(ii) if the Party complained against invokes Article 11.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

3. 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 disputing Party; and

(d) comply with the code of conduct to be established by the Joint Committee.

4. Notwithstanding Article 22.13 (Non-Implementation and 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 shall not suspend benefits in the financial services sector.

Article 11.19. INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim under Section B (Investor-State Dispute Settlement) of Chapter 9 (Investment) against the other Party and the respondent invokes Article 11.10, on request of the respondent, the tribunal shall refer the matter in writing to the 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 Committee shall decide the issue of whether and to what extent Article 11.10 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 Joint Committee. The decision shall be binding on the tribunal.

3. Where the 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 22.7 (Establishment of Panel). The panel shall be constituted in accordance with Article 11.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. The Committee may decide that, for the purposes of a referral pursuant to paragraph 1, the financial services authorities of the relevant Parties shall make the decision described in paragraph 2 and transmit that decision to the tribunal and the Joint Committee. In that case, a request may be made under paragraph 3 if the relevant Parties have not made the decision described in paragraph 2 within 60 days of their receipt of the referral under paragraph 1.

5. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

6. For the purposes of this Article, tribunal means a tribunal established under Article 9.20 (Selection of Arbitrators).

Article 11.20. DEFINITIONS

For the 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 a Party into the territory of the other Party;

(b) in the territory of a 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 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, certificates of deposits);

(ii) foreign exchange;

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

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

(v) transferable securities;

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

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

(l) money broking;

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

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

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

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

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 9.29 (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 issued by 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 the purposes of Chapter 9 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 9.29 (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 1.6 (Definitions) 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 regulatory or supervisory authority over financial service suppliers or financial institutions.

Chapter 12. TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 12.1. GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties, the Parties' mutual desire of facilitating temporary entry for business persons in accordance with their legislation and the provisions in Annex 12-A and of establishing transparent criteria and procedures for temporary entry for business persons as well as the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, permanent residence, or employment on a permanent basis.

3. Nothing in this Chapter or any other provision of this Agreement shall be construed to prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to unduly nullify or impair the benefits accruing to the other Party under the terms of specific categories in Annex 12-A.

4. The sole fact of requiring a visa to natural persons shall not be considered to nullify or impair the provisions of this Agreement.

Article 12.2. GENERAL OBLIGATIONS

Each Party shall apply its measures related to this Chapter in accordance with Article 12.1 and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article 12.3. GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to business persons who comply with immigration measures applicable to temporary entry and other related measures, such as those related to public health and safety and national security, in accordance with this Chapter.

2. Temporary entry granted pursuant to this Chapter shall not replace the requirements demanded to carry out a profession or an activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

3. A Party may refuse to issue an immigration document authorizing employment to a business person in accordance with its legislation where the temporary entry of that person might adversely affect:

(a) the settlement of any labor dispute underway at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

Article 12.4. PROVISION OF INFORMATION

1. Further to Article 18.1 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and

(b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and make available, explanatory material regarding the requirements for temporary entry of business persons under this Chapter.

2. Each Party shall collect, maintain and, upon request, make available to the other Party, in accordance with its legislation, the information regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including specific data for each authorized category.

3. The contact points (1) shall be in charge of exchanging the information referred to in this Article.

(1) For the Republics of Central America, the contact points are those referred to in Article 21.3 (Contact Points).

Article 12.5. DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Article 22.4 (Consultations), regarding a denial to grant temporary entry under this Chapter or a particular case arising under Article

12.2, unless:

(a) the matter involves a pattern of practice; and

(b) the affected business person has exhausted the available administrative proceedings regarding that particular matter, in accordance with the legislation of the denying Party.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one yearof the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 12.6. COOPERATION

Taking into consideration the principles set forth in Article 12.1, the Parties shall endeavor as far as possible to:

(a) cooperate to strengthen the institutional capacity and promote technical assistance between the immigration authorities; and

(b) exchange information and experiences on regulations and implementation of programs and technology in the context of immigration matters, including those related to the use of biometric technology, advanced information systems for passengers, frequent flyer programs and security in travel documents.

Article 12.7. WORKING GROUP

1. The Parties hereby establish a Working Group on Temporary Entry of Business Persons (hereinafter referred to as the "Working Group"), comprising representatives of each Party, including immigration officials and contact points, in accordance with paragraph 3.

2. The Working Group shall meet, when necessary, to consider matters pertaining to this Chapter, such as:

(a) the implementation and administration of this Chapter;

(b) the establishment of procedures for the exchange of information on measures affecting the temporary entry under this Chapter;

(c) the development of measures to further facilitate temporary entry of business persons; and

(d) any other measures of mutual interest related to this Chapter.

3. The Working Group shall be comprised of:

(a) for Korea, a representative from Visa and Residence Division in Ministry of Justice;

(b) for Costa Rica, representatives from the Ministry of Foreign Trade (Ministerio de Comercio Exterior de Costa Rica), the Ministry of Work and Social Security (Ministerio de Trabajo y Seguridad Social) and the General Directorate of Migrations and Foreigners (Dirección General de Migración y Extranjería);

(c) for El Salvador, representatives from the Trade Agreements Administration Bureau of the Ministry of Economy (Dirección de Administración de Tratados Comerciales del Ministerio de Economía), General Directorate of Migration and Inmigration (Dirección General de Migración y Extranjería) and the Ministry of Labor (Ministerio de Trabajo);

(d) for Honduras, representatives from the Directorate General of Administration and Negotiation of Agreements of the Secretary of State in the Office of Economic Development, National Institute of Migration (Dirección General de Administración y Negociación de Tratados de la Secretaría de Estado en el Despacho de Desarrollo Económico, Instituto Nacional de Migración), and Secretary of State in the Office of Labor and Social Security (Secretaría de Estado en el

Despacho de Trabajo y Seguridad Social);

(e) for Nicaragua, representatives from the Ministry of Development, Industry and Trade (Ministerio de Fomento, Industria y Comercio), General Directorate of Migration and Inmigration (Dirección General de Migración y Extranjería), and the Ministry of Labor (Ministerio del Trabajo); and

(f) for Panama, representatives from the National Immigration Service (Servicio Nacional de Migración) through the Office of International Trade Negotiations of the Ministry of Commerce and Industries (Oficina de Negociaciones Comerciales Internacionales del Ministerio de Comercio e Industrias), or their successors.

Subsection 12.8. RELATION TO OTHER CHAPTERS

1. Nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures except as provided in this Chapter and Chapters 1 (Initial Provisions and General Definitions), 18 (Transparency), 21 (Institutional Provisions), 22 (Dispute Settlement), 23 (Exceptions), and 24 (Final Provisions).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 12.9. DEFINITIONS

For the purposes of this Chapter:

business activities means legitimate commercial activities undertaken and operated for the purpose of obtaining profits in the market, but not including the possibility of obtaining employment, wages or remuneration from a labor source in the territory of a Party granting the temporary entry;

business person means a national of a Party who is engaged in trade of goods, the supply of services, or the conduct of investment activities;

executive means a person who shall have the following basic responsibilities:

(a) managing the administration of the organization, or of a relevant component, or function within it;

(b) establishing the policies and objectives of the organization, components or function; and

(c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders;

manager means a person who shall have the following basic responsibilities:

(a) directing the organization or a department or sub-division of the organization;

(b) supervising and controlling the work of other professional employees, supervisors, or managers;

(c) having the authority to hire and dismiss or to recommend these actions, and to undertake other actions related to the management of the personnel directly supervised by this person, and to perform senior functions within the organizational hierarchy or functions related to his position; and

(d) performing discretionary actions related to the ordinary operation of the functions over which this person has authority;

pattern of practice means a practice repeatedly carried out by the immigration authorities of a Party during a representative period immediately before the execution of such practice;

specialist means a person who possesses specialized knowledge of the enterprise's products or services and its application in international markets, or an advanced level of expertise or knowledge of the enterprise's process and procedures; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

Chapter 13. TELECOMMUNICATION 1

(1) In place of the obligations established in this Chapter, Costa Rica shall undertake the obligations set out in Annex 13-C.

Article 13.1. SCOPE

1. This Chapter shall apply 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 adopted or maintained by a Party 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 an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications services, this Chapter shall 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 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 private networks to supply public telecommunications networks or services to third persons.

Article 13.2. ACCESS AND USE OF PUBLIC TELECOMMUNICATIONS NETWORKS AND SERVICES (2)

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party 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 or with circuits leased or owned by another enterprise;

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

(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, 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 ensure the security and confidentiality of messages, or protect the privacy of non-public personal data of subscribers to public telecommunications services, provided 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 and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and 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 and 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;

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

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

(d) 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 laws or regulations.

(2) For greater certainty, Article 13.2 shall not prevent a Party from requiring a license, authorization or other type of authorization to an enterprise to provide any public telecommunications network or service in its territory.

Article 13.3. OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly, or indirectly within the same territory, interconnection with 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 obtained as a result of interconnection arrangements and only use such information for the purposes of providing these services.

(c) Each Party shall provide its telecommunications regulatory body the authority to require suppliers of public telecommunications services to file their interconnection contracts.

Number Portability

2. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions. (3) (4)

Dialing Parity and Access to Telephone Numbers (5)

3. Each Party shall ensure that:

(a) suppliers of public telecommunications services in its territory provide dialing parity within the same category of service to suppliers of public telecommunications services of the other Party; and

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

(3) Paragraph 2 shall not apply with respect to suppliers of voice over internet protocol services. For Nicaragua and Korea, in any case, number portability will only be possible between networks providing the same category of services.

(4) In complying with this paragraph, the Parties may take into account the economic feasibility of providing number portability for fixed telephony.

(5) Article 13.3.3(a) shall not apply with respect to suppliers of international public telecommunications services.

Article 13.4. TREATMENT BY MAJOR SUPPLIERS

Each Party shall ensure that a major supplier in its territory accords 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.

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

Article 13.5. COMPETITIVE SAFEGUARDS

1. Each Party shall maintain appropriate measures for the purposes of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

(a) engaging in anticompetitive cross-subsidization;

(b) using information obtained from competitors with anticompetitive results; and

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

Article 13.6. RESALE

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services. (6)

(6) Where provided in its laws or regulations, a Party may prohibit a reseller that obtains, at wholesale rate, 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 13.7. UNBUNDLING OF NETWORK ELEMENTS

1. Each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, nondiscriminatory, and transparent for the supply of public telecommunications services.

2. 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 laws and regulations.

Article 13.8. INTERCONNECTION

General Terms and Conditions

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

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

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

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

(d) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at 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

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges

that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

(a) negotiation of a new interconnection agreement;

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

(c) the terms and conditions of an interconnection agreement in force.

Public Availability of Interconnection Offers and Agreements

3. If a major supplier in the territory of a Party has a reference interconnection offer, the Party shall require the offer to be made publicly available.

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.

6. Each Party shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

Article 13.9. PROVISIONING AND PRICING OF LEASED CIRCUITS SERVICES (7)

1. Each Party shall ensure that a major supplier in its territory provides enterprises of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to enterprises of the other Party at capacity-based, flat rate, cost-oriented prices.

(7) Article 13.9 shall not be construed to require a Party to ensure that the major supplier provides leased circuits as an unbundled network element.

Article 13.10. CO-LOCATION

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution on terms and conditions, and at cost-oriented rates, that are reasonable, nondiscriminatory, and transparent.

3. Each Party may limit which premises are subject to paragraphs 1 and 2, provided the Party specifies any such limitation in its law or regulations.

Article 13.11. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY (8)

Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, conduits, and rights-of-way owned or controlled by the major supplier to suppliers of public telecommunications services of the other Party in the Party's territory on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

(8) Each Party shall implement this obligation only for land lines.

Article 13.12. SUBMARINE CABLE SYSTEMS

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory to a supplier of public telecommunication services of the other Party, where such supplier of the other Party is authorized to operate a submarine cable system as a public telecommunications service.

Article 13.13. CONDITIONS FOR THE SUPPLY OF INFORMATION SERVICES

1. Neither Party may require an enterprise in its territory that it classifies (9) as a supplier of information services and that supplies those services over facilities that the enterprise does not own, to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect its networks with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of information services that the Party has found in a particular case to be anticompetitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

(9) For the purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

Article 13.14. INDEPENDENT REGULATORY BODIES (10)

Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating or management role in any such supplier. Each Party shall ensure that regulatory decisions and procedures, of its telecommunications regulatory body are impartial with the respect to all market participants.

(10) El Salvador, Honduras, Nicaragua and Panama shall endeavor to ensure that their telecommunications regulatory body has adequate resources to carry out its functions.

Article 13.15. UNIVERSAL SERVICE

1. Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain.

2. Such obligations shall not be considered anticompetitive per se, provided they are administered in a transparent, non-discriminatory, and competitively neutral manner and the Party shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.16. LICENSES AND OTHER AUTHORIZATIONS

1. When a Party requires a supplier of public telecommunications services to have a license or other authorization (11) the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures it applies;

(b) the period it normally requires to reach a decision concerning an application for a license or other authorization; and

(c) the terms and conditions of all licenses or authorizations in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license or other authorization.

(11) For the purposes of this Chapter, the term authorization is understood to include concessions, permits, registrations, or other authorizations that the Party may require to supply public telecommunications services.

Article 13.17. 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 retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 10.4 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 10.1.3 (Scope) to an investor or covered investment of the other Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of public telecommunications services. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 13.18. ENFORCEMENT

Each Party shall provide its competent authority with the authority to enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.12. That authority shall include the ability to impose sanctions or other measures which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses or other authorizations.

Article 13.19. RESOLUTION OF TELECOMMUNICATIONS DISPUTES

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) (i) enterprises of the other Party may have recourse in accordance with the procedures established in the legislation to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 13.2 through 13.12; and

(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 specified period after the supplier requests interconnection, by its telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with that major supplier;

Judicial Review (12)

(b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party.

(12) For greater certainty, in accordance with its legislation, a Party may require the exhaustion of administrative remedies before request the judicial review.

Article 13.20. TRANSPARENCY

Further to Article 18.1 (Publication), 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 reasonable opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes;

(c) to the extent practicable, all comments filed to the telecommunications regulatory body in the rulemaking are made publicly available; and

(d) 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) conditions for attaching terminal or other equipment to the public telecommunications network; and

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

(ii) procedures relating to judicial and other adjudicatory proceedings.

Article 13.21. MEASURES CONCERNING TECHNOLOGIES AND STANDARDS

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. (13)

(13) For Panama, 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 13.22. RELATION 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 13.23. DEFINITIONS

For the purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services in accordance with the legislation of the Party;

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 which public telecommunications services supplier the end-user chooses;

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 1.6 (Definitions) and includes a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided 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

(a) for Korea, value-added services that add value to telecommunications services through enhanced functionality, and specifically means those services as defined in subparagraph 12 of Article 2 of the Telecommunications Business Act; and

(b) for El Salvador, Honduras, Nicaragua, and Panama, 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 that facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications networks or 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 without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;

physical co-location means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to provide 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, and excludes 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 sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications; and

user means an end user or a supplier of public telecommunications services.

Chapter 14. 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 the WTO rules to measures affecting electronic commerce.

2. The Parties agree to promote the development of electronic commerce between them, in particular by cooperating on issues arising from electronic commerce under this Chapter.

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 9 (Investment), 10 (Cross-Border Trade in Services), and 11 (Financial Services), which are subject to any exceptions or non-conforming measures set out in this Agreement that are

applicable to such obligations.

Article 14.3. DIGITAL PRODUCTS

1. Neither Party may impose customs duties, fees, or other charges (1) on or in connection with the importation or exportation of:

(a) if it is an originating good, a digital product fixed on a carrier medium; (2) or

(b) a digital product transmitted electronically.

2. Neither Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital product 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 in the territory of the other Party; or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party; or

(b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory. (3)

3. Paragraph 2 does not apply to any non-conforming measure described in accordance with Article 9.13 (Non-Conforming Measures), 10.6 (Non-Conforming Measures), or 11.9 (Non-Conforming Measures).

(1) For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges on digital products, provided that the taxes or charges are imposed in a manner consistent with this Agreement.

(2) For greater certainty, a digital product fixed on a carrier medium is defined in Annex 14-A.

(3) For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

Article 14.4.

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

Article 14.5. PERSONAL DATA PROTECTION

1. The Parties recognize the benefits of adopting or maintaining legislation for the protection of personal data of the users of electronic commerce in order to ensure their confidence in electronic commerce.

2. For this purpose, the Parties shall endeavor to share information and experiences on the protection of personal data in electronic commerce.

Article 14.6. PAPERLESS TRADING

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 14.7. COOPERATION

1. The Parties recognize the importance of cooperation mechanisms on issues arising from electronic commerce, inter alia to address the following:

(a) the protection of personal data;

(b) the treatment of unsolicited commercial electronic messages;

(c) the security of electronic commerce;

(d) the protection of consumers in the field of electronic commerce; and

(e) other issues of mutual concern relevant for the development of electronic commerce.

2. The Parties shall endeavor to share information and experiences on laws and regulations related to electronic commerce and shall endeavor to cooperate to help micro, small, and medium-sized enterprises overcome the obstacles they face in the use of electronic commerce.

3. Recognizing the global nature of electronic commerce, the Parties shall endeavor to actively participate in regional and multilateral fora to promote the development of electronic commerce and to exchange views, as necessary, within the framework of such fora on issues related to electronic commerce.

Article 14.8. RELATION TO OTHER CHAPTERS

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

Article 14.9. DEFINITIONS

For the purposes of this Chapter:

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically; (4)

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means;

personal data means any information about an identified or identifiable natural person; and

trade administration documents means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

(4) For greater certainty, digital products do not include digitized representations of financial instruments.

Chapter 15. INTELLECTUAL PROPERTY RIGHTS

Section A. General Provisions

Article 15.1. OBJECTIVES

The objectives of this Chapter are:

(a) to increase the benefits from trade and investment, to promote innovation and creativity by providing certainty for the right holders and users of intellectual property rights, and to facilitate the enforcement of intellectual property rights;

(b) to facilitate production and commercialization of innovative and creative products;

(c) to encourage the transfer and dissemination of technology, in a manner conducive to social and economic welfare; and

(d) to strike the balance between the legitimate interest of the right holders and the public at large.

Article 15.2. INTERNATIONAL AGREEMENTS

1. Each Party reaffirms its existing rights and obligations with respect to each other under the TRIPS Agreement and any other agreements relating to intellectual property to which they are parties. To this end, nothing in this Chapter shall derogate from the existing rights and obligations that Parties have to each other under the TRIPS Agreement or any other intellectual property agreements.

2. Each Party shall make all reasonable efforts to accede to the following agreements:

(a) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);

(b) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention 1991); (1)

(c) the Patent Law Treaty (2000);

(d) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and

(e) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

(1) With regard to this subparagraph, for El Salvador, it is understood that an effective protection of plant varieties either by patents, a sui generis system, or by any combination thereof by the date of entry into force of this Agreement shall be considered to be consistent with this Chapter.

Article 15.3. MORE EXTENSIVE PROTECTION

The Parties shall, at a minimum, give effect to this Chapter. The Parties may but shall not be obliged to provide more extensive protection for, and enforcement of intellectual property rights under their laws than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

Article 15.4. NATIONAL TREATMENT

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (2) of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection (3) and enjoyment of such intellectual property rights and any benefits derived from such rights.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 shall not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the World Intellectual Property Organization (hereinafter referred to as the "WIPO") in relation to the acquisition or maintenance of intellectual property rights.

(2) For the purposes of Articles 15.4.1, 15.4.2 and 15.38, a "national" of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.6 (Definitions)), of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements mentioned in Article 15.2 and the TRIPS Agreement.

(3) For the purposes of Article 15.4.1, "protection" includes:
(1) 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; and
(2) the prohibition on circumvention of effective technological measures set out in Article 15.32, the rights and obligations concerning rights management information set out in Article 15.33 and protection of encrypted program-carrying signals set out in Article 15.35.

Article 15.5. APPLICATION OF CHAPTER TO EXISTING SUBJECT MATTER AND PRIOR ACTS

1. Except as it provides otherwise, this Chapter shall give rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and which is protected on said date in the territory of the Party where protection

is claimed, or which meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Except as otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement, has fallen into the public domain in the territory of the Party where the protection is claimed.

3. This Chapter shall not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article 15.6. TRANSPARENCY

With the objective of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published (4), or where publication is not practicable, made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

(4) For greater certainty, a Party may satisfy the requirement in Article 15.6 to publish a law, regulation, or procedure by making it available to the public on the Internet.

Article 15.7. GENERAL PROVISIONS

1. The Parties recognize the need to maintain a balance between the rights of the right holders and the public interest.

2. The Parties recognize the importance of the principles established in:

(a) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted on November 14, 2001 by the WTO at its Fourth Ministerial Conference, held in Doha, Qatar;

(b) the Decision of the WTO General Council on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, adopted on August 30, 2003;

(c) the Protocol Amending the TRIPS Agreement, done at Geneva on December 6, 2005; and

(d) Resolution WHA61.21, Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property, adopted on May 24, 2008 by the Assembly of the World Health Organization.

3. Each Party may, in formulating or amending its legislation, adopt measures necessary, and make use of exceptions and flexibilities to protect public health and nutrition, and to promote the public interest in sectors of vital importance.

4. The Parties shall be free to establish their own regime for exhaustion of intellectual property rights.

Section B. Trademarks

Article 15.8. TRADEMARKS PROTECTION

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services.

2. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include scent marks.

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 for goods or services that are identical or similar 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 the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.

Article 15.9. EXCEPTIONS

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 into account the legitimate interests of the owner of the trademark and of third parties.

Article 15.10. WELL-KNOWN TRADEMARKS

1. Neither Party may require as a mandatory condition for determining that a mark is a well-known mark, that the trademark has been registered in the territory of the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) (hereinafter referred to as the "Stockholm Act") shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified as a well-known trademark, (5) 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.

3. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

(5) For the purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

Article 15.11. REGISTRATION AND APPLICATION OF TRADEMARKS

1. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a 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 oppose a trademark application before registration and to seek cancellation or invalidation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

2. Each Party shall provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance for 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.

3. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

Article 15.12. CLASSIFICATION OF GOODS AND SERVICES

Each Party shall provide that:

(a) each registration and 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) (hereinafter referred to as the "Nice Classification"), as revised and amended; and

(b) 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.

Article 15.13. NON-RECORDATION OF A LICENSE

Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a

trademark, or for other purposes. (6)

(6) A Party may establish a means to allow licensees to record licenses for the purposes 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.

Section C. Patents

Article 15.14. PATENTABLE SUBJECT MATTER

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application. (7)

2. Each Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. The Parties may also exclude from patentability:

(a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

(7) For the purposes of Section C, a Party may treat the terms “inventive step” and “capable of industrial application” as synonymous with the terms “non-obvious” and “useful” respectively.

Article 15.15. EXCEPTIONS

1. Each 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 into account the legitimate interests of third parties.

2. Consistent with paragraph 1, 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 its territory other than for the purposes related to generating such information to support an application for meeting marketing approval requirements of that Party to market the product once the patent expires, and if the Party permits exportation of such product, the Party shall provide that the product shall only be exported outside its territory for the purposes of generating information to support an application for meeting marketing approval requirements of that Party.

Article 15.16. GRACE PERIOD

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 filling of the application in the territory of the Party.

Article 15.17. AMENDMENTS, CORRECTIONS, AND OBSERVATIONS

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications.

Article 15.18. CLAIMED INVENTION

1. 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.

2 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.

3. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility.

Article 15.19. ACCELERATED EXAMINATION

Each Party may provide an applicant with accelerated examination for the patent application in accordance with its laws and regulations.

Section D. Measures Related to Certain Regulated Products

Article 15.20. MEASURES RELATED TO CERTAIN REGULATED PRODUCTS

1. The Parties agree that undisclosed data concerning safety and efficacy that is submitted as a condition of approving the marketing of new pharmaceutical or agricultural chemical products shall be protected through the principle of national treatment.

2. By providing protection periods of at least five years (8) for pharmaceutical products and 10 years for agricultural chemical products, in their legislation, the Parties afford a satisfactory level of protection that corresponds to the relevant obligations they have entered into.

(8) Panama shall provide and maintain the protection period in its legislation. For greater certainty, such protection period is normally five years for pharmaceutical products.

Section E. Designs

Article 15.21. DESIGNS PROTECTION

1. The Parties shall ensure in their laws adequate and effective protection of industrial designs.

2. The owner of a protected design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.

3. The Parties may provide the legal means to prevent the use of the unregistered appearance of a product, in cases where the contested use results from copying the unregistered appearance of such product.

Article 15.22. EXCEPTIONS

Each Party may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of third parties.

Section F. Unfair Competition and Undisclosed Information

Article 15.23. UNFAIR COMPETITION

For the purposes of this Agreement, as regards to unfair competition, protection will be granted in accordance with Article 10bis of the Stockholm Act.

Article 15.24. UNDISCLOSED INFORMATION

Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Section G. Copyright and Related Rights

Subsection A. Copyright and Related Rights

Article 15.25. COPYRIGHT AND RELATED RIGHTS

The Parties shall comply with the following agreements: (9)

(a) the Berne Convention for the Protection of Literary and Artistic Works (1971) (hereinafter referred to as the "Berne Convention");

(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) (hereinafter referred to as the "Rome Convention");

(c) the WIPO Copyright Treaty (1996); and

(d) the WIPO Performances and Phonograms Treaty (1996).

(9) Article 15.25 shall apply without prejudice to the reservations that a Party has made under one or more agreements referred to in this Article.

Article 15.26. RIGHT OF REPRODUCTION

Each Party shall provide that authors, performers and producers of phonograms have the right to authorize or prohibit (10) all reproductions of their works, performances, (11) phonograms and broadcasts in any manner or form, permanent or temporary (including temporary storage in electronic form).

(10) For the purposes of this Chapter, the "right to authorize or prohibit" with respect to copyrights and related rights refers to exclusive rights.

(11) For the purposes of this Chapter, a "performance" with respect to copyrights and related rights means a performance fixed in a phonogram unless otherwise specified.

Article 15.27. RIGHT OF DISTRIBUTION

Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies (12) of their works, performances, and phonograms through sale or other transfer of ownership.

(12) As used in Article 15.27, "copies" and "original and copies", being subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Article 15.28. TERM OF PROTECTION

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.

Article 15.29. APPLICATION OF ARTICLE 18 OF THE BERNE CONVENTION AND ARTICLE 14.6 OF THE TRIPS AGREEMENT

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to the subject matter, rights, and obligations in this Section.

Article 15.30. NO FORMALITY

Neither Party may subject the enjoyment and exercise of the rights of authors, performers and producers of phonograms provided for in this Chapter to any formality.

Article 15.31. CONTRACTUAL TRANSFERS

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and production of phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

Article 15.32. TECHNOLOGICAL PROTECTION MEASURES

1. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of any 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.

2. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental or advertisement for sale or rental, of devices, products, or components, or the provision of services which:

(a) are promoted, advertised, or marketed, for the purpose of circumvention of;

(b) have only a limited commercially significant purpose or use, other than to circumvent of; or

(c) are primarily designed, produced, or performed, for the purpose of enabling or facilitating the circumvention of, any effective technological measure.

3. **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 related rights.

4. The Parties shall confine exceptions and limitations to measures implementing paragraphs 1 and 2 to the following activities:

(a) 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;

(b) 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 research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(c) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing paragraph 2;

(d) 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) 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 online 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;

(f) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;

(g) access by a nonprofit library, archive, or educational institution to a work, performance, phonogram, or broadcast not otherwise available to it, for the sole purpose of making acquisition decisions; and

(h) 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, provided that any limitation or exception adopted in reliance on this clause shall have effect for a renewable period of not more than four years from the date the proceeding concludes.

Article 15.33. RIGHTS MANAGEMENT INFORMATION

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 set out in Article 15.55. 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 noncommercial broadcasting entity, is found to have engaged willfully and for the purposes of commercial advantage or private financial gain in any of the foregoing activities;

(b) each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of 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;

(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, phonogram, or broadcast to the public; and

(d) for greater certainty, nothing in this paragraph shall be construed to obligate a Party to require the owner of any right in the work, performance, phonogram, or broadcast to attach rights management information to copies of the work, performance, phonogram, or broadcast, or to cause rights management information to appear in connection with a communication of the work, performance, phonogram, or broadcast to the public.

Article 15.34. LIMITATIONS AND EXCEPTIONS

The Parties may, in their legislation, provide for limitations and exceptions to, the rights granted to the right holders referred to in this Section in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

Article 15.35. 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 make use of, or further distribute, a programcarrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal, or if the signal has been decoded with the authorization of the lawful distributor of the signal, willfully to further distribute the signal for the purposes of commercial advantage knowing that the signal originated as an encrypted program-carrying signal and that such further distribution is without the authorization of the lawful signal distributor.

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 15.36. COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

The Parties recognize the importance of the performance of the collecting societies, and the establishment of arrangements between them, with the purpose of mutually ensuring easier access to and delivery of content between the territories of the Parties, and the achievement of a high level of development with regard to the execution of their tasks. In this regard, each Party shall endeavor to achieve a high level of effectiveness and to improve transparency with respect to the execution of the task of their respective collecting societies.

Subsection B. Copyright

Article 15.37. RIGHT OF COMMUNICATION TO THE PUBLIC

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, 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.

Subsection C. Related Rights

Article 15.38. PROTECTED SUBJECT MATTER

With respect to the rights accorded under this Chapter to performers, producers of phonograms, and broadcasting organizations, each Party shall accord those rights:

(a) to the performers and producers of phonograms who are nationals of the other Party;

(b) with respect to performances and phonograms that are first published or first fixed in the territory of the other Party; (13) and

(c) to broadcasting organizations if they have their headquarters on its territory and the broadcasts are transmitted from transmitters situated on the same territory.

(13) With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication.

Article 15.39. RIGHTS OF PERFORMERS

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;

(b) the fixation of their unfixed performances; and

(c) making available to the public of those performances in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 15.40. RIGHT OF PHONOGRAM PRODUCERS

Each Party shall provide to phonogram producers the right to authorize or prohibit the making available to the public of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 15.41. RIGHT TO REMUNERATION OF PERFORMERS AND PHONOGRAM PRODUCERS

Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes, for broadcasting or for any communication to the public. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between both categories of right holders.

Article 15.42. RIGHT OF BROADCASTING ORGANIZATIONS

1. Each Party shall provide broadcasting organizations with the right to authorize or prohibit:

(a) the re-broadcasting of their broadcasts;

(b) the reproduction of fixations of their broadcasts; and

(c) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of a entrance fee. It shall be a matter for each Party's law where protection of this right is claimed to determine the conditions under which it may be exercised.

2. Each Party shall provide that the term of protection of a broadcast shall not be less than 50 years after the taking place of the broadcast.

3. Notwithstanding Article 15.35, 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. (14)

(14) For the purposes of paragraph 3 and for greater certainty, the Parties understand that retransmission within a Party's territory over a closed, defined, subscriber network that is not accessible from outside the Party's territory shall not constitute retransmission on the Internet.

Article 15.43. DEFINITIONS

For the purposes of Sub-Sections A and C, the following definitions shall apply with respect to performers, producers of phonograms and broadcasting organizations:

broadcasting means the transmission to the public by wireless means or satellite for public reception of sounds or sounds and images, or representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

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;

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;

producer of a phonogram means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or a phonogram means the offering of copies of the fixed performance or the phonogram

to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

Section H. Enforcement of Intellectual Property Rights

Subsection A. General Obligations

Article 15.44. ENFORCEMENT PRACTICES WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights be in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that those decisions and rulings be published (15) or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

2. 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 systems, including any statistical information. (16)

(15) A Party may satisfy the publication requirement in Article 15.44 by making the decision or ruling available to the public on the Internet.

(16) For greater certainty, nothing in Article 15.44 is intended to prescribe the type, format, and method of publication of the information.

Article 15.45. PRESUMPTIONS

In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the designated right holder in such work or other subject matter. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

Subsection B. Civil and Administrative Procedures and Remedies

Article 15.46. ENTITLED RIGHT HOLDERS

Each Party shall make available to right holders (17) civil judicial procedures concerning the enforcement of any intellectual property right.

(17) For the purposes of this Article, "right holder" includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

Article 15.47. DAMAGES

Each Party shall provide that:

(a) in civil judicial proceedings, 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; or

(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, which may be presumed to be the amount of damages referred to in sub-subparagraph (i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, the value of the infringed good or service, measured by the suggested retail price, or other legitimate measure of value submitted by the right holder.

Article 15.48. PRE-ESTABLISHED DAMAGES

In civil judicial proceedings, each Party, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, may establish or maintain pre-established damages, which shall be available on the election of the right holder.

Article 15.49. LEGAL COSTS

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, or trademark infringement, that the prevailing party shall be awarded payment by the losing party of court costs or fees and, at least in proceedings concerning copyright or related rights infringement or trademark counterfeiting, reasonable attorney's fees. 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 shall be awarded payment by the losing party of reasonable attorney's fees.

Article 15.50. SEIZURE

In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of allegedly infringing goods, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article 15.51. DESTRUCTION

Each Party shall provide that:

(a) its judicial authorities shall have the authority to order, at their discretion or, at the right holder's request, 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; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce

Article 15.52. RIGHT OF INFORMATION

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, for the purposes of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder or the judicial authorities.

Article 15.53. CONFIDENTIALITY ORDER

Each Party shall provide that its judicial authorities shall have the authority to impose sanctions, in appropriate cases, on a party (18) to a proceeding who fails to abide by confidentiality orders issued by such authorities.

(18) A "party" may include parties to a civil judicial proceeding, their counsel, experts, or other persons subject to the court's jurisdiction.

Article 15.54. ADMINISTRATIVE PROCEDURES

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 set out in this Chapte

Article 15.55. REMEDIES

In civil judicial proceedings concerning the acts described in Articles 15.32 and 15.33, each Party shall provide that its judicial authorities shall, at the least, have the authority to:

(a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) provide an opportunity for the right holder to elect award of either actual damages it suffered or pre-established damages;

(c) order 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) order the destruction of devices and products found to be involved in the prohibited activity.

Neither Party may make damages available under this paragraph against a nonprofit library, archives, educational institution, or public noncommercial 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

Article 15.56. PROHIBITION OF INFRINGING IMPORTS AND THEIR EXPORTATION

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, in order, inter alia, to prevent infringing imports from entering the channels of commerce and to prevent their exportation.

Article 15.57. EXPERTS' COSTS

In the event that a Party's judicial or other competent authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation 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.

Article 15.58. ALTERNATIVE DISPUTE RESOLUTION

Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning copyright and related rights.

Article 15.59. PROVISIONAL MEASURES

1. Each Party shall act on requests for provisional measures inaudita altera parte expeditiously in accordance with its rules of judicial procedure.

2. Each Party shall provide that its judicial authorities have the authority to require the plaintiff, with respect to provisional measures, 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.

Subsection C. Special Requirements Related to Border Measures

Article 15.60. INFORMATION PROVIDED BY RIGHT HOLDERS TO COMPETENT AUTHORITIES

Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods (19) 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 its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to its territory.

(19) For the purposes of Articles 15.60 through 15.66:

counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that 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 that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Article 15.61. INFORMATION PROVIDED BY COMPETENT AUTHORITIES TO RIGHT HOLDERS

Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall inform the right holder within a reasonable time frame of the names and addresses of the consignor, the importer, or the consignee, and of the quantity of the goods in question.

Article 15.62. REASONABLE SECURITY OR ASSURANCE

Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected infringing goods to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 15.63. EX OFFICIO BORDER ENFORCEMENT

Each Party shall provide that its competent authorities may initiate border measures *ex officio* (20) with respect to imported, exported, or in-transit merchandise. (21) Such measures shall be used when there is a reason to believe or suspect that such merchandise is counterfeit or pirated.

(20) For greater certainty, the Parties understand that ex officio action shall not require a formal complaint from a private party or right holder.

(21) For the purposes of Article 15.63, in-transit merchandise means goods under "customs transit" and goods "transshipped," as defined in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Protocol).

Article 15.64. DESTRUCTION

Each Party shall provide that goods that have been suspended from release by its competent authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances. 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.

Article 15.65. FEES

Where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

Article 15.66. EXCHANGE OF TECHNICAL INFORMATION

Each Party shall endeavor to provide the other Party, on mutually agreed terms, information on the enforcement of border measures concerning intellectual property rights, to promote bilateral and regional cooperation on these matters.

Subsection D. Criminal Procedures and Remedies

Article 15.67. CRIMINAL PROCEDURES AND PENALTIES

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 infringements on a commercial scale.

Article 15.68. PENALTIES, SEIZURE, FORFEITURE, AND DESTRUCTION

1. Remedies available in accordance with Article 15.55 shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure of suspected goods, and any materials and implements predominantly used in the commission of the alleged offence, as well as forfeiture and destruction of the infringing goods, and any materials and implements predominately used in the commission of the offence.

2. The Parties may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed willfully and on a commercial scale.

Subsection E. Effective Action Against Infringement In the Digital Environment

Article 15.69. LIMITATIONS ON LIABILITY OF SERVICE PROVIDERS

The Parties agree to maintain the type of limitations of responsibility of service providers they currently foresee in their legislation in order to comply with their international obligations.

Article 15.70. MEASURES AGAINST REPETITIVE INFRINGEMENT ON THE INTERNET

Each Party shall endeavor to take effective measures to curtail repetitive infringement of copyright and related rights on the Internet or other digital networks.

Section I. Technology Transfer and Cooperation

Article 15.71. TECHNOLOGY TRANSFER

1. The Parties recognize the importance of technological innovation as well as the transfer and dissemination of technological information to the mutual advantage of technology producers and users, particularly in the new digital economy. In this regard, the Parties are encouraged to promote cooperation in relation to science, technology, entrepreneurship and innovation, subject to the available resources and conditions.

2. The Parties recognize that technology transfer contributes to the strengthening of national capabilities with the aim of establishing a sound and viable technological base.

Article 15.72. COOPERATION

1. The areas of cooperation may include the following:

(a) exchange of information on the legal framework concerning intellectual property right and relevant rules of protection and enforcement;

(b) exchange of experience on legislative process;

(c) capacity building for officials on intellectual property rights;

(d) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society; promotion of public awareness of consumers and right holders;

(e) exchange information on the implementation of intellectual property rights in, inter alia, business circles and civil society;

(f) exchange information on the implementation of intellectual property systems aimed at promoting the efficient registration of intellectual property rights; and

(g) other areas of mutual interest concerning intellectual property rights.

2. Cooperation activities shall be conducted on mutually agreed terms and subject to the availability of funds.

Section J. Committee on Intellectual Property Right

Article 15.73. COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS

1. The Parties hereby establish the Committee on Intellectual Property Rights (hereinafter referred to as the “Committee”). The Committee shall be comprised by the following, for:

(a) Korea, the Ministry of Trade, Industry and Energy in collaboration with the competent institutions in the matters to be addressed;

(b) Costa Rica, the Ministry of Foreign Trade (Ministerio de Comercio Exterior) and the National Registry (Registro Nacional);

(c) El Salvador, the Ministry of Economy (Ministerio de Economía) in collaboration with the competent institutions in the matters to be addressed;

(d) Honduras, the Secretariat of State in the Office of Economic Development (Secretaría de Estado en el Despacho de Desarrollo Económico) and the General Directorate of Intellectual Property (Dirección General de Propiedad Intelectual);

(e) Nicaragua, the Ministry of Development, Industry and Trade (Ministerio de Fomento, Industria y Comercio), in collaboration with the competent institutions in the matters to be addressed; and

(f) Panama, the Ministry of Commerce and Industries (Ministerio de Comercio e Industrias) in collaboration with the competent institutions in the matters to be addressed, or their successors.

2. For the purposes of the effective implementation and operation of this Chapter, the functions of the Committee shall include, but are not limited to:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing ways to facilitate cooperation between the Parties;

(c) exchange of information on laws, systems and other issues of mutual interest concerning intellectual property rights;

(d) seeking to resolve disputes that may arise regarding the interpretation or application of this Chapter; and

(e) carrying out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. Unless the Parties otherwise agree, the Committee shall meet within one year after the date of entry into force of this Agreement and annually thereafter. Meetings may be conducted in person or by any technological means available to the Parties. The Committee shall inform the Joint Commission of the results of each meeting

Chapter 16. LABOR

Article 16.1. CONTEXT AND OBJECTIVES

1. The Parties recognize that this Chapter enshrines a cooperative approach based on common values and interests, taking into account the differences in their levels of development.

2. The Parties recognize that it is not their intention in this Chapter to harmonize their labor standards, but to strengthen their trade relations and cooperation in a way that promotes sustainable development.

3. The objectives of this Chapter are to:

(a) promote the common aspiration that free trade and investment should lead to job creation, and decent work, with terms and conditions of employment that adhere to the principles in International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (hereinafter referred to as the “ILO Declaration”);

(b) encourage and achieve better understanding of each Party’s labor systems, sound labor policies and practices, and the improved capacity of each Party, including their relevant stakeholders, through increased cooperation and dialogue;

(c) promote the improvement of working conditions within the respective Parties' territories and protect, enhance and enforce fundamental rights of workers; and

(d) enable the discussion and exchange of views on labor issues of mutual interest without undermining the labor laws of each Party.

Article 16.2. GENERAL PRINCIPLES AND COMMITMENTS

1. The Parties reaffirm their obligations as members of the International Labor Organization (hereinafter referred to as the "ILO") and their commitments under the ILO Declaration. Each Party shall strive to adopt and maintain in its laws, regulations, and practices thereunder, the following rights as stated in the ILO Declaration:

(a) the freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labor;

(c) the effective abolition of child labor; and

(d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall respect the other Party's sovereign right to set its own policies and national priorities and to set, administer and enforce its own labor laws, regulations and practices according to its policies and priorities.

3. The Parties shall not fail to effectively enforce their labor laws, including those they adopt or maintain in accordance with paragraph 1, through a sustained or recurrent action or inaction, in a manner affecting trade or investment between the Parties. The Parties recognize that each Party retains the right to exercise discretion with respect to the distribution of enforcement resources and to make decisions regarding the allocation of enforcement resources.

4. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its laws or regulations implementing paragraph 1, in a manner affecting trade or investment between the Parties, where the waiver and derogation would be inconsistent with the principles set out in paragraph 1.

5. Each Party shall ensure that its labor laws, regulations, policies and practices shall not be used for trade protectionist purposes.

Article 16.3. 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.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent.

3. Each Party shall promote public awareness of its labor laws, regulations, policies and practices domestically, and may develop mechanisms as appropriate to inform its public of activities undertaken pursuant to this Chapter, in accordance with its laws, regulations, policies and practices.

4. The Parties recognize the desirability of clear, well understood and broadly consulted labor laws, regulations, policies and practices.

Article 16.4. INSTITUTIONALARRANGEMENTS

Contact Points

1. Each Party shall designate a contact point for labor matters within its labor ministry or other relevant ministries to facilitate communication between the Parties. After the date of entry into force of this Agreement, the Parties shall provide their contact information and notify of any changes of its contact point in due time.

Labor Committee

2. The Parties hereby establish a Labor Committee (hereinafter referred to as the "Committee"). The Committee shall comprise appropriate senior officials from the labor ministry and other ministries of each Party.

3. The Committee shall:

(a) establish an agreed work program of cooperative activities;

(b) oversee and evaluate the agreed cooperative activities;

(c) serve as a forum for dialogue on labor matters of mutual interest;

(d) review the operation and outcomes of this Chapter; and

(e) take any other action it decides appropriate for the implementation of this Chapter.

4. Unless the Parties otherwise agree, the Committee shall meet within one year after the date of entry into force of this Agreement, and thereafter as necessary, to discuss matters of common interest and oversee the implementation of this Chapter, including the cooperative activities set out in Article 16.6. Meetings may be conducted in person or by any technological means available to the Parties.

Public Participation

5. The Committee may consult or seek the advice of relevant stakeholders or experts over matters relating to the implementation of this Chapter.

Article 16.5. CONSULTATION

1. Any matter arising related to the interpretation or implementation of this Chapter shall be resolved amicably and bona fide by the Parties through direct dialogue, consultations, and cooperation.

2. A Party may request consultations with the other Party by delivering a written request to the contact point designated under Article 16.4.1. The consultation shall begin promptly after delivery of the request.

3. If the Parties fail to resolve the matter through their contact points, the requesting Party may request that the Committee be convened to consider the matter. The Committee shall convene promptly and endeavor to resolve the matter expeditiously.

4. The Committee shall produce a report providing conclusions and recommendations on resolving the matter, and both Parties shall strive to implement the conclusions and recommendations of the Committee as soon as practicable.

5. Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Chapter.

Article 16.6. COOPERATION

1. The Parties commit to establish close relationship through cooperative activities in areas of mutual interest as set out in paragraphs 2 and 3, in order to promote the objectives of this Chapter and enhance better understanding on the other Party's labor system.

2. The areas of cooperation between the Parties pursuant to this Chapter may include, but are not limited to:

(a) labor policies of mutual interest;

(b) labor management relations;

(c) working conditions;

(d) occupational safety and health;

(e) vocational training and human resource development;

(f) labor statistics; and

(g) such other labor matters as the Parties may agree in accordance with their labor legislations.

3. Cooperative activities may be implemented through a variety of means, which may include, but should not be limited to:

(a) arranging study visits and other exchanges between government delegations, professionals, students and specialists;

(b) exchanging information on labor legislation and best practices;

(c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(d) developing collaborative projects or demonstrations;

(e) engaging in joint research projects, studies, and reports, including through engagement of independent experts with

recognized expertise; and

(f) other forms of technical exchanges or cooperation to which the Parties may agree.

4. Any cooperative activities agreed to pursuant to paragraph 3 shall take into consideration each Party's labor priorities and needs, as well as the resource available. Any specific activity or project launched by mutual determination may also be documented in a separate arrangement.

5. Each Party may, as appropriate, invite the participation of its unions and employers or other persons and organizations of its country in identifying potential areas for cooperation, and undertaking cooperative activities.

Chapter 17. ENVIRONMENT

Article 17.1. CONTEXT AND OBJECTIVES

1. The Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

2. The Parties recognize that economic development, social development, and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefits of cooperation on trade-related environmental issues as part of a global approach to trade and sustainable development.

3. The Parties recognize that it is not their intention in this Chapter to harmonize their environmental laws, but to strengthen their trade relations and cooperation in a way that promotes sustainable development in the context of paragraphs 1 and 2.

4. In this regard, the Parties:

(a) recognize their commitments to promote compliance and effective implementation of each Party’s environmental law;

(b) will strive to promote the conservation and sustainable use of biodiversity, and the preservation of traditional knowledge relevant to the conservation of biological diversity and the sustainable use of its components; and

(c) reaffirm their intention to strengthen cooperation on environmental matters.

5. Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Chapter.

Article 17.2. SCOPE

This Chapter shall apply to measures adopted or maintained by the Parties affecting trade-related aspects of environmental issues.

Article 17.3. GENERAL PRINCIPLES

1. The Parties shall endeavor to seek mutually supportive trade and environmental policies and shall promote the adequate use of their resources, including biodiversity, in accordance with the objective of sustainable development.

2. The Parties reaffirm each other’s sovereign right over their natural resources, reiterate their sovereign rights to establish their own levels of environmental protection and their own environmental development, policies and priorities, and to adopt or modify accordingly their environmental laws, regulations and policies.

3. The Parties reaffirm their willingness to comply with their commitments under this Chapter, taking into account the differences in their levels of development and the respect of their current and future needs and aspirations.

Article 17.4. SPECIFIC COMMITMENTS

1. Each Party shall endeavor to ensure that its laws and policies provide for high levels of environmental protection and of sustainable use and conservation of its natural resources. Each Party shall also strive to continue improving its protection levels on those matters.

2. The Parties recognize that it is inappropriate to promote trade or investments by weakening or reducing the protections afforded in their environmental laws. Accordingly, neither Party shall derogate from, or offer to derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an incentive to promote trade or investment

between the Parties.

3. The Parties recognize that it is inappropriate to use their environmental laws and policies in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade or investment.

4. The Parties recognize the importance that their environmental laws provide for a fair and transparent public participation mechanism.

5. Each Party shall endeavor to maintain its laws, regulations, and policies consistent and in compliance with multilateral environmental agreements (hereinafter referred to as "MEAs") to which it is a party, as well as with international efforts towards achieving sustainable development.

Article 17.5. ENFORCEMENT OF LAWS

1. A Party shall not fail to effectively enforce its environmental laws and regulations, 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.

2. Nothing in this Chapter shall be construed to empower a Party's competent authorities to carry out activities oriented towards the enforcement of environmental legislation in the territory of the other Party.

Article 17.6. PROCEDURAL GUARANTEE

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 environmental laws. Such tribunals may include administrative, quasi-judicial, judicial, or other relevant tribunals.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its environmental laws are fair, equitable and transparent.

3. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its laws.

Article 17.7. TRANSPARENCY

The Parties, in accordance with their respective laws, agree to develop, introduce, and implement, any measures aimed at protecting the environmental conditions that affect trade or investment between the Parties in a transparent manner.

Article 17.8. ENVIRONMENTAL COMMITTEE

1. The Parties hereby establish an Environmental Committee (hereinafter referred to as the "Committee"), which shall comprise appropriate senior officials within their administrations.

2. The Committee shall:

(a) establish an agreed work program of cooperative activities;

(b) oversee and evaluate the agreed cooperative activities;

(c) serve as a forum for dialogue on environmental matters of mutual interest;

(d) review the operation and outcomes of this Chapter; and

(e) take any other action under its functions whenever the Parties so agree.

3. The Committee may consider any other matters within the scope of this Chapter, and may also identify possible new areas of cooperation.

4. The Committee shall meet as necessary, to discuss matters of common interest and oversee the implementation of this Chapter, including the cooperative activities. Meetings may be conducted in person or by any technological means available to the Parties.

Article 17.9. CONTACT POINTS

After the date of entry into force of this Agreement, the Parties shall designate a contact point for environmental matters to facilitate communication between the Parties.

Article 17.10. ENVIRONMENTAL CONSULTATIONS

1. Any matter arising related to the interpretation or implementation of this Chapter shall be resolved amicably and bona fide by the Parties through direct dialogue, consultations, and cooperation.

2. A Party may request consultations with the other Party by delivering a written request to the contact point designated under Article 17.9, explaining the reasons for the consultations.

3. If the Parties fail to resolve the matter through their contact points, such matter may be discussed by the Committee

Article 17.11. COOPERATION

1. The Parties hereby agree to promote cooperation activities on mutual interest.

2. The Parties shall endeavor to assure that cooperation activities:

(a) are consistent with the programs, strategies of development, and national priorities of each Party;

(b) would create opportunities for the public to take part in the development and implementation of such activities; and

(c) would take into consideration the economy, and the legal system of each Party.

3. The areas of cooperation between the Parties in respect of this Chapter may include, but are not limited to:

(a) environmental management;

(b) institutional capacity for enforcement of environmental law; including MEAs;

(c) cleaner production technologies;

(d) forestry;

(e) water quality;

(f) air quality;

(g) energy efficiency and renewable energy;

(h) innovative environmental technologies, including technologies of carbon dioxide capture;

(i) measures for evaluating the vulnerability and adaptation to climate change; and

(j) such other environmental matters as the Parties may agree in accordance with their priorities.

Chapter 18. TRANSPARENCY

Article 18.1. 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, including on the electronic means, 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 measures that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 18.2. 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 that other Party's

interests under this Agreement.

2. Upon 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 that other Party has been previously notified of that measure.

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

4. Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points, unless otherwise agreed by the Parties.

Article 18.3. ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial and reasonable manner all measures of general application respecting to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 18.1 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 the Party's 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 its law.

Article 18.4. 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 the Party's law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 18.5. DEFINITIONS

For the purposes of this Chapter:

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

(a) a determination or ruling made in 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.

Chapter 19. COOPERATION

Article 19.1. SCOPE

1. The Parties affirm the importance of all forms of cooperation, with particular attention to the economic, technical and commercial cooperation, as a means to contribute to the implementation of the objectives of this Chapter, taking into

account their different levels of development and the size of their economies.

2. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement and in other bilateral cooperation mechanisms.

3. The Parties shall endeavor to give priority to cooperation in the fields identified in this Chapter; however, this does not constitute a limitation to the inclusion of other sectors or areas.

Article 19.2. OBJECTIVE

The objective of this Chapter is to facilitate the establishment of close cooperation aimed, *inter alia,* at:

(a) strengthening the capacities of the Parties to maximize the opportunities and benefits of this Agreement;

(b) developing cooperation at bilateral, regional or multilateral level;

(c) promoting economic and social development;

(d) stimulating productive synergies, creating new opportunities for trade and investment and promoting competitiveness and innovation;

(e) supporting and promoting the development of micro, small and medium-sized enterprises (hereinafter referred to as the "MSMEs") in order to achieve their insertion in international trade or global value chains;

(f) increasing the level of cooperation activities, given the cooperative relationship between the Parties;

(g) encouraging the presence of the Parties and their goods and services in international markets; and

(h) supporting and complementing the efforts of the Parties to implement the priorities set in their own policies and development strategies.

Article 19.3. METHODS AND MODALITIES

1. Cooperation between the Parties will be implemented through the tools, resources and mechanisms available to them, following the rules and procedures and through the appropriate agencies.

2. In particular, for the identification, development and implementation of projects, the Parties may use instruments and modalities, such as exchange of information, experiences and best practices, technical assistance and refundable and non-refundable financial cooperation including the triangular cooperation among others.

Article 19.4. COOPERATION COMMITTEE

1. The Parties hereby establish a Cooperation Committee (hereinafter referred to as the "Committee") comprising representatives of each Party.

2. For the purposes of this Chapter, the Committee's functions shall include:

(a) agreeing on and developing areas of cooperation between the Parties;

(b) establishing a work plan for the development of cooperation;

(c) collecting and consolidating the work plans of cooperation developed by each of the committees formed within this Agreement;

(d) reviewing and evaluating proposals for cooperation;

(e) monitoring programs, projects and other initiatives of cooperation;

(f) ensuring the implementation and fulfillment of the objectives of the programs, projects and other initiatives of cooperation;

(g) providing support and advice for the presentation of programs, projects and other initiatives of cooperation, in accordance with the strategic priorities of the Parties; and

(h) carrying out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. Unless the Parties otherwise agree, the Committee shall meet at least once a year. Meetings may be conducted in person or by any technological means available to the Parties.

Article 19.5. CONTACT POINTS

1. The Parties hereby designate contact points to facilitate communication on possible cooperation activities. Contact points will have the responsibility to work with their government agencies, business sector representatives and educational and research institutions for the operation of this Chapter.

2. For the implementation of this Chapter, the following contact points are designated:

(a) for Korea, Ministry of Trade, Industry and Energy;

(b) for Costa Rica, Ministry of Foreign Trade (Ministerio de Comercio Exterior);

(c) for El Salvador, Ministry of Economy (Ministerio de Economía);

(d) for Honduras, Secretariat of Economic Development (Secretaría de Desarrollo Económico);

(e) for Nicaragua, Ministry of Trade, Industry and Development (Ministerio de Fomento, Industria y Comercio); and

(f) for Panama; Ministry of Commerce and Industries (Ministerio de Comercio e Industrias), or their successors or the office that the Parties notify.

Article 19.6. AREAS OF COOPERATION

1. The Parties will promote the use of instruments and mechanisms of cooperation through mutually advantageous conditions, including but not limited to the following areas:

(a) micro, small and medium-sized enterprises;

(b) culture (including tourism and audiovisual services);

(c) promotion of a more favorable business environment;

(d) healthcare industry;

(e) agriculture, livestock (including agro-industrial);

(f) industry and commerce (including textile and apparel);

(g) science and technology (including information technology and communication);

(h) transport, logistics and distribution;

(i) trade and sustainable development (including forestry and renewable energy);

(j) fisheries and aquaculture;

(k) financial services sector; (1) and

2. The Parties shall endeavor to develop, promote and strengthen cooperation in the areas described in paragraph 1 as well as the activities or areas of cooperation established in other Chapters of this Agreement.

(1) This subparagraph shall only apply for Honduras.

Article 19.7. DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Chapter

Chapter 20. COMPETITION POLICY

Article 20.1. OBJECTIVE AND PRINCIPLES

1. The objective of this Chapter is to prevent that the benefits of trade liberalization from being undermined by conducts or transactions that may restrict or distort competition in the markets of the Parties, by ensuring implementation of competition policies, and promoting cooperation and coordination between their competition authorities on matters covered by this Chapter.

2. The Parties therefore agree that the following are incompatible with this Agreement, in so far as they may affect trade between the Parties:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition;

(b) any abuse by one or more enterprises of a dominant position or a substantial market power or notable market participation; and

(c) concentrations between enterprises, which significantly impede effective competition, as specified in their respective competition laws.

Article 20.2. COMPETITION LAW AND AUTHORITIES

1. Each Party shall adopt or maintain competition laws that promote and protect the competitive process in its markets by proscribing conducts or transactions referred to in Article 20.1.2. Each Party shall take appropriate actions with respect to those conducts or transactions with the objective of promoting an efficient functioning of the markets and consumer welfare.

2. Each Party shall establish or maintain an authority or authorities responsible for the enforcement of its competition laws.

3. Each Party shall ensure that any exemptions to the competition laws shall be stipulated in its legislation and implemented transparently.

Article 20.3. IMPLEMENTATION

1. The enforcement of competition policies by the competition authority, shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

2. Each Party shall provide persons subject to the imposition of a sanction or remedy under its competition legislation with reasonable opportunity to present evidence, to be heard and to seek judicial review of the sanction or remedy, according to the legislation of each Party.

3. Each Party shall make publicly available its competition legislation.

4. Each Party shall ensure that all final decisions finding a violation of its competition laws are provided in written form and set out any relevant factual findings and legal basis on which the decision is based, according to the legislation of each Party

Article 20.4. COOPERATION

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their competition legislation and to fulfill the objectives of this Agreement.

2. Accordingly, the Parties shall cooperate in relation to the enforcement of their respective competition legislation and policies, through mechanisms such as notification, consultation, exchange of information, and technical assistance, according to the legislation of each Party.

3. This cooperation shall not prevent the Parties from taking autonomous decisions.

Article 20.5. NOTIFICATIONS

1. Each Party, through its competition authority, shall notify to the competition authority of the other Party of an enforcement activity regarding conducts or transactions referred to in Article 20.1.2, if it considers that such enforcement activity may substantially affect important interests of the other Party.

2. Provided that it is not contrary to the Party's competition legislation and does not affect any investigation being carried out, the notification shall take place at an early stage of the enforcement activity

Article 20.6. CONSULTATIONS

1. To foster mutual understanding, or to address specific matters that arise under this Chapter, a Party should enter into consultation upon request of the other Party without prejudice to the autonomy of each Party to develop, maintain and enforce its competition legislation.

2. The Party to which a request for consultations has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

Article 20.7. EXCHANGE OF INFORMATION AND CONFIDENTIALITY

The competition authority of a Party, upon request of the competition authority of the other Party, shall endeavor to provide non-confidential information to facilitate effective enforcement of their respective competition legislation, provided that it does not affect any ongoing investigation and is compatible with the legislation of each Party.

Article 20.8. TECHNICAL ASSISTANCE

1. The Parties may provide each other with technical assistance, within the available resources, in any areas they consider appropriate, including exchange of experiences, capacity building for the implementation of their competition legislation and policies, and promotion of competition culture.

2. On the date of entry into force of this Agreement, the Parties shall notify the contact point in the competition authority to whom any request of technical assistance shall be submitted.

Article 20.9. STATE ENTERPRISES AND DESIGNATED MONOPOLIES

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises and/or designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies are subject to their respective competition legislation and do not adopt or maintain any conducts or transactions referred to in Article 20.1.2, that affect trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Article 20.10. DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Chapter.

Article 20.11. TRANSITIONAL ARRANGEMENTS

If, at the date of entry into force of this Agreement, a Party has not yet adopted a competition law or established a competition authority, the Party shall do so within a period of two years.

Article 20.12. DEFINITIONS

For the purposes of this Chapter:

competition authority means:

(a) for Korea, the Korea Fair Trade Commission;

(b) for Costa Rica, the Commission for the Promotion of Competition (Comisión para Promover la Competencia) and Superintendence of Telecommunications (Superintendencia de Telecomunicaciones);

(c) for El Salvador, the Superintendence of Competition (Superintendencia de Competencia);

(d) for Honduras, the Commission for the Defense and Promotion of Competition (Comisión para la Defensa y Promoción de la Competencia);

(e) for Nicaragua, the National Institute for the Promotion of Competition (Instituto Nacional de Promoción de la Competencia); and

(f) for Panama, the Authority for Consumer Protection, and Competition Defense (Autoridad de Protección al Consumidor y Defensa de la Competencia), or their successors.

competition law means:

(a) for Korea, the Monopoly Regulation and Fair Trade Act;

(b) for Costa Rica, the Law for the Promotion of Competition and Effective Consumer Protection (Ley para la Promoción de la Competencia y Defensa Efectiva del Consumidor), Law No. 7472 of December 20th, 1994; and General Telecommunications Law (Ley General de Telecomunicaciones), Law No. 8642 of June 30th, 2008;

(c) for El Salvador, the Competition Law (Ley de Competencia), approved by Legislative Decree No. 528 of November 26th, 2004;

(d) for Honduras, the Law for the Defense and Promotion of Competition (Ley para la Defensa y Promoción de la Competencia), approved by Decree No. 357-2005 of February 4th, 2006;

(e) for Nicaragua, the Law for the Promotion of Competition (Ley de Promoción de la Competencia), approved by Law No. 601 of September 28th, 2006; and

(f) for Panama, the Law that Establishes Standards for Consumers Protection and Competition Defense (Ley que Dicta Normas de Protección al Consumidor y Defensa de la Competencia), approved by the Law No. 45 of October 31th, 2007, and their implementing regulations and amendments.

Chapter 21. INSTITUTIONAL PROVISIONS

Article 21.1. JOINT COMMITTEE

1. The Parties hereby establish the Joint Committee, comprising cabinet-level representatives of the Parties, as set out in Annex 21-A, or their designees.

2. The Joint Committee shall:

(a) supervise the implementation of this Agreement;

(b) supervise the work of all committees, working groups, and other bodies established under this Agreement, referred to in Annex 21-C;

(c) consider ways to further enhance trade relations between the Parties;

(d) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(e) assess the outcomes of the application of this Agreement;

(f) oversee the further elaboration of this Agreement;

(g) establish the amount of remuneration and expenses that will be paid to panelists; and

(h) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may:

(a) establish and delegate responsibilities to ad hoc and standing committees, working groups, or other bodies;

(b) seek the advice of non-governmental persons or groups;

(c) make a recommendation to the Parties to consider amendments to this Agreement;

(d) issue interpretations of the provisions of this Agreement;

(e) adopt its own rules of procedure; and

(f) modify in fulfillment of the Agreement's objectives:

(i) the Schedules to Annex 2-B (Elimination of Customs Duties) with the purposes of adding one or more goods excluded in the Schedule of a Party or accelerating the tariff reduction;

(ii) the specific rules of origin established in Annex 3-A (Product Specific Rules of Origin), any uniform regulations on origin procedures that the Parties may develop and the format of the Certificate of Origin set out in Annex 3-C (Certificate of Origin);

(iii) Annex 8-A (Coverage);

(iv) the subheadings of the goods classified as digital products fixed on a carrier medium set out in Annex 14-A (Digital Product Fixed on a Carrier Medium); and

(v) the model rules of procedure for panels and code of conduct of Chapter 22 (Dispute Settlement); and

(g) take such other action in the exercise of its functions as the Parties may agree.

4. Unless the Parties otherwise agree, the Joint Committee shall convene:

(a) in regular session every year, the Joint Committee meetings shall be chaired jointly by Korea and by one of the Republics of Central America. Unless otherwise decided by the Parties, sessions of the Joint Committee shall be held alternatively in the territory of Korea and one of the Republics of Central America; and

(b) in special session within 30 days of the request of a Party, who may request at any time, through a notice in writing to the other Parties with such sessions to be held in the territory of the other Party or at such location as the Parties may agree or by any technological means available.

5. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee or any body established under this Agreement or by the Joint Committee on the same basis as the Party providing the information.

6. All decisions and recommendations of the Joint Committee and all committees, working groups, and other bodies established under this Agreement shall be taken by consensus of the Parties without prejudice to the provisions of paragraphs 9 and 10.

7. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in paragraph 3(f) within such period as the Parties may agree.

8. When the Joint Committee adopts a decision in accordance with paragraph 3(f) in the case of bilateral affairs in accordance with paragraphs 9 and 10, the adoption, approval and implementation of this decision by the other Parties is not required.

9. Notwithstanding the provisions of paragraph 1, to discuss bilateral issues of interest to Korea and one or more Republics of Central America, the Joint Committee may meet and adopt decisions when the officials of these Parties meet, provided they give sufficient advanced notice to the other Republics of Central America to enable them to participate in the meeting.

10. A decision or recommendation adopted by the Joint Committee pursuant to paragraph 9 shall take effect for the Parties who adopted the decision or recommendation.

Article 21.2. AGREEMENT COORDINATORS

1. Each Party shall appoint an Agreement Coordinator, as set out in Annex 21-D, or the person designated by the Party.

2. The coordinators shall work jointly to develop agendas and make other preparations for Joint Committee meetings and shall follow up on Joint Committee decisions or recommendations, as appropriate.

Article 21.3. CONTACT POINTS

1. Each Party shall designate a contact point by the entry into force of this Agreement to facilitate communications between the Parties on any matter covered by this Agreement. The designation of contact points is without prejudice to the specific designation of competent authorities under specific provisions of this Agreement.

2. Upon request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

Chapter 22. DISPUTE SETTLEMENT

Section A. Dispute Settlement

Article 22.1. COOPERATION

1. 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 satisfactory resolution of any matter that might affect its operation.

2. All solutions of matters raised under this Chapter shall be consistent with this Agreement and must not impede the achievement of its objectives.

3. Solutions reached in accordance with paragraph 2 shall be notified to the Joint Committee within 15 days from the agreement of the Parties.

Article 22.2. SCOPE

1. Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

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

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

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 6 (Technical Barriers to Trade), 8 (Government Procurement) or 10 (Cross-border Trade in Services) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. A Party may not invoke paragraph 1(c) with respect to any measure subject to an exception under Article 23.1 (General Exceptions).

Article 22.3. CHOICE OF FORUM

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other trade agreement to which the Parties to the dispute are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 22.4. CONSULTATIONS

1. Any one or more of the Republics of Central America may request consultations with Korea and vice-versa with respect to any matter described in Article 22.2 by delivering written notification through the designated office, with copies to the other Parties. The requesting Party or Parties 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. The other Party shall reply in writing within 10 days of the date of receipt of the request.

2. Consultations may be conducted in person or by technological means and shall be held within 30 days of the date of the receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to whom the consultations were requested. The consultations shall be deemed concluded within 60 days of the date of the receipt of the request, unless the Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential and without prejudice to the rights of any Party in any further proceedings.

3. Consultations on matters of urgency, including those regarding perishable or seasonal goods (1) or goods or services that rapidly lose their trade value such as certain seasonal goods or services, shall be held within 15 days of the date of the receipt of the request, and shall be deemed concluded within 20 days of the date of the receipt of the request.

4. If consultations are not held within the time frames laid down in paragraph 2 or 3 respectively, or if consultations have been concluded and no agreed solution has been reached, the requesting Party may request the intervention of the Joint Committee in accordance with Article 22.5.

5. The consulting Parties shall make every attempt to arrive at a satisfactory solution of any matter through consultations

under this Article. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. In consultations under this Article, a Party may request that the other Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

7. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

(1) For greater certainty, perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24. Seasonal goods are goods whose imports, over a representative period, are not spread over the whole year but concentrated on specific times of the year as a result of seasonal factors.

Article 22.5. REFERRAL TO THE JOINT COMMITTEE (2)

1. If the Parties fail to resolve a matter within 60 days of the receipt of a request for consultations under Article 22.4 or 20 days where the matter concerns cases of urgency, including those concerning perishable or seasonal goods or goods or services that rapidly lose their trade value such as certain seasonal goods or services, only the consulting Party may request the intervention of the Joint Committee by delivering written notice to the other Party or Parties.

2. The requesting Party shall deliver the request to the other Party or Parties, and shall set out in the request, the reasons thereof including identification of the measure at issue and an indication of the legal and factual basis for the complaint.

3. Unless it decides otherwise, the Joint Committee shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly, with the objective to arrive at a satisfactory resolution.

4. The Joint Committee may meet in person or through any other technological means available to the Parties.

5. The Joint Committee may consolidate two or more proceedings regarding the same measure or matter pursuant to this Article when it determines that it is appropriate to be considered jointly.

(2) For the purposes of this Article, the Joint Committee shall consist of representatives of the consulting Parties, as set out in Annex 21-A (Joint Committee) or of persons appointed by them.

Article 22.6. GOOD OFFICES, CONCILIATION, OR MEDIATION

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution such as good offices, conciliation, and mediation.

2. Proceedings that involve good offices, conciliation, and mediation, shall be confidential and without prejudice to the rights of either Party in any other proceedings.

3. Parties participating in proceedings under this Article may terminate those proceedings at any time.

4. Once procedures for good offices, conciliation, or mediation are concluded without an agreement between the Parties, the complaining Party may request the establishment of a panel.

Article 22.7. ESTABLISHMENT OF PANEL

1. The Party may deliver a written request to establish a dispute settlement panel to the other Party, provided that a matter has not been resolved in any of the following cases:

(a) when the Parties to the dispute have not settled the dispute during consultations within the 60 day period established in Article 22.4 or 20 days where the matter concerns cases of urgency, including those concerning perishable goods, or goods or services that rapidly lose their trade value such as certain seasonal goods or services, or within any other period that the Parties to the dispute may agree during consultations;

(b) 30 days after the Joint Committee has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 22.5;

(c) within 30 days after the receipt of the request to refer the matter to the Joint Committee or any other period agreed by the Parties to the dispute, or when the meeting has not been held pursuant to the provisions established in Article 22.5.3; or

(d) when the requesting Party that referred the matter to the Joint Committee considers, once the period indicated by the Joint Committee has expired, that the measures aimed at complying with the agreement reached pursuant to Article 22.5, were not adopted.

2. The requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

3. A panel shall be established upon the date of receipt of the request referred to in paragraph 1.

4. A Party that is eligible under paragraph 1 to request the establishment of a panel may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of the request by the Party for the establishment of a panel.

5. If a Party does not join as a complaining Party in accordance with paragraph 4, it shall refrain thereafter from initiating or continuing subparagraph (a) and (b) regarding the same matter in the absence of a significant change in economic or commercial circumstances:

(a) a dispute settlement procedure under this Agreement; or

(b) a dispute settlement proceeding under the WTO Agreement or under another free trade agreement to which it and the Party complained against are party, on grounds that are substantially equivalent to those available to it under this Agreement.

6. Unless otherwise agreed by the Parties to the dispute, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

7. A panel may not be established to review a proposed measure.

8. Unless the Parties to the dispute otherwise agree, the Parties to the dispute shall apply the following procedures in selecting a panel:

(a) the panel shall be composed of three members;

(b) each Party shall appoint one panelist within 30 days after the date of receipt of the request for the establishment of a panel. If a Party fails to appoint a panelist within that period, the Parties shall meet within seven days and select a panelist by lot from among the members of the contingent list established under paragraph 10 who are nationals of that Party;

(c) a Party may exercise a peremptory challenge against any individual not on the contingent list within 14 days after the individual has been proposed as a panelist. If a Party has exercised three peremptory challenges, the other Party shall select a panelist from the contingent list;

(d) the Parties shall endeavor to agree on a third panelist who shall serve as chair;

(e) if the Parties are unable to agree on the chair within 30 days after the date on which the second panelist has been appointed, the Parties shall meet within seven days and select the chair by lot from among the members of the contingent list established under paragraph 10 who are not nationals of either Party; and (3)

(f) a panelist shall be considered appointed to a panel when that person is proposed pursuant to subparagraph (b) and no peremptory challenge is exercised pursuant to subparagraph (c), or when that person is selected from the contingent list pursuant to this paragraph.

9. In cases where two or more Parties acting together as complaining Party or Party complained against, and there is no agreement as to the appointment of a panelist, one of them, chosen by lot, shall represent the other with respect to the procedure set out in paragraph 8(b).

10. Within 180 days of the date of entry into force of this Agreement, the Parties shall establish a contingent list of individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, the contingent list shall include three nationals of each Party and at least eight individuals who are not nationals of any of the Parties. An individual on

the contingent list shall be appointed by agreement of the Parties for a minimum term of three years and shall remain on the list until the individual is replaced or is unable to serve. The Parties shall review the contingent list every three years and may replace individuals on the list as appropriate. The Parties may also appoint a replacement where a member of the contingent list is no longer available to serve.

11. If a panelist appointed under this Article becomes unable to serve on the panel, a successor shall be appointed in the same manner as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. In such a case, any time period applicable to the panel proceedings shall be suspended for a period beginning on the date when the original panelist becomes unable to serve and ending on the date when the new panelist is appointed.

12. Individuals appointed to a panel pursuant to paragraph 8 or to the contingent list pursuant to paragraph 10 shall:

(a) be chosen strictly on the basis of objectivity, reliability and sound judgment;

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

(c) be independent of, and not be affiliated with or take instructions from, any of the Parties; and

(d) comply with the code of conduct established by the Joint Committee.

13. If a Party to the dispute believes that a panelist has violated or is in violation of the code of conduct, the Parties to the dispute shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

(3) If a panelist selected by lot under subparagraph (b) or (e) is unable to serve on the panel, the Parties shall meet within seven days of learning that the panelist is unavailable to select another panelist by lot from among the remaining members of the contingent list who are nationals of the relevant Party (in the case of subparagraph (b)) or not nationals of either Party (in the case of subparagraph (e)). If a panelist becomes unable to serve during the course of the proceeding or when the panel is reconvened pursuant to Article 22.12 or 22.13, then within seven days of learning that the panelist is unavailable, the relevant Party shall select a replacement panelist from the contingent list or, in the case of the chair, the Parties shall meet to select a replacement chair by lot from among the members of the contingent list who are not nationals of either Party.

Article 22.8. MODEL RULES OF PROCEDURE

1. Unless the Parties to the dispute otherwise agree, the panel shall follow the model rules of procedure established by the Joint Committee, which shall ensure:

(a) a right to at least one hearing before the panel;

(b) that, subject to subparagraph (f), any hearing before the panel shall be open to the public;

(c) the possibility of using technological means to conduct the proceedings;

(d) an opportunity for each Party to the dispute to provide initial and rebuttal submissions;

(e) that each participating Party's written submissions, written versions of its oral statement, and written response to a request or questions from the panel may be made available to the public subject to subparagraph (f);

(f) the protection of information designated by any of the Parties for confidential treatment; and

(g) that all notices to the Parties are made through the designated office.

2. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. Unless the Parties to the dispute otherwise agree within 20 days of the delivery of the request for the establishment of the panel, the panel's terms of reference shall be: "To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the request for the establishment of the panel, to make findings, determinations, and recommendations as provided in Articles 22.10.1 and 22.10.2, and to present the written reports referred to in Articles 22.10.1 and 22.10.5."

4. Upon request of a Party to the dispute, 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 to the dispute so agree and subject to such terms and conditions as the Parties to the dispute may agree.

5. The decisions of the panel, including the adoption of the report, shall be adopted by a majority of its members. No panel may disclose which panelists are associated with majority or minority opinions.

Article 22.9. THIRD PARTIES

1. Any Party having a substantial interest in a dispute before a panel and having notified its interest in writing to the Parties to such a dispute and the rest of the Parties shall have an opportunity to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and may be reflected in the report of the panel.

2. Third Parties shall receive the submissions of the Parties to the dispute at the first meeting of the panel.

3. If a third Party considers that a measure that is already the subject of a panel proceeding nullifies or impairs benefits accruing to it under the covered agreements, such Party may have recourse to normal dispute settlement procedures under this Agreement.

Article 22.10. PANEL REPORT

1. Unless the Parties to the dispute otherwise agree, the panel shall, within 90 days after the chair is appointed, present to the Parties to the dispute an initial report containing findings of fact and its determination as to:

(a) (i) whether the measure at issue is inconsistent with the obligations of this Agreement;

(ii) whether a Party to the dispute has otherwise failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue is causing nullification or impairment in the sense of Article 22.2.1(c); and

(b) any other matter that the Parties to the dispute have jointly requested that the panel address, as well as the reasons for its findings and determinations.

2. When the panel considers that it cannot provide its report within 90 days, it shall inform the Parties to the dispute 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 120 days. The panel shall inform the Parties to the dispute of any determination under this paragraph no later than seven days after the initial written submission of the complaining Party or Parties and shall adjust the remainder of the schedule accordingly.

3. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties. The panel shall consider this Agreement in accordance with customary rules of interpretation of public international law, such as the ones established in the Vienna Convention on the Law of Treaties (1969). The panel may, at the request of the Parties to the dispute, make recommendations for the resolution of the dispute.

4. Each Party to the dispute may submit written comments to the panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties to the dispute on the initial report, the panel may modify its report and make any further examination it considers appropriate.

5. The panel shall present a final report to the Parties within 30 days of the presentation of the initial report, unless the Parties to the dispute otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

6. The final report of a panel shall be final and binding unless the Parties to the dispute otherwise agree. The report of the panel shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes.

Article 22.11. SUSPENSION AND TERMINATION OF PROCEEDINGS

1. The Parties to the dispute may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party to the dispute. If the work of the panel has been continuously suspended for more than 12 months, the authority for establishment of the panel shall lapse unless the Parties to the dispute otherwise agree.

2. The Parties to the dispute may agree to terminate the proceedings of a panel in the event that a satisfactory solution to the dispute has been found. In such event the Parties to the dispute shall jointly notify the chair of the panel.

3. Before the panel provides its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.

Article 22.12. IMPLEMENTATION OF THE FINAL REPORT

1. Upon receipt of the final report of a panel, the Parties to the dispute 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 to the dispute has not conformed with its obligations under this Agreement or that a Party to the dispute's measure is causing nullification or impairment in the sense of Article 22.2.1(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

Article 22.13. NON-IMPLEMENTATION AND SUSPENSION OF BENEFITS

1. If a panel has made a determination of the type described in Article 22.12.2, and the Parties to the dispute are unable to reach an agreement on a resolution pursuant to Article 22.12.1, within 30 days of receiving the final report, or such other period as the Parties to the dispute may agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing acceptable compensation.

2. If the Parties to the dispute:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 22.12.1, and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement, the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits of equivalent effect 15 days after the later of the date on which it provides notice to the other Party to the dispute under this paragraph or the panel issues its determination under paragraph 5, as the case may be.

3. In considering which benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as those 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 Article 22.2.1(c); and

(b) the complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

4. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits under Article 22.2.1(c) has been brought into conformity with this Agreement, or until such time as the Parties to the dispute have otherwise reached an agreement on a resolution of the dispute. However, if the Party complained against comprises two or more Republics of Central America, and one or more complies with the final report, or reaches a satisfactory agreement with the complaining Party, the latter shall terminate the suspension of benefits for such Republic or Republics of Central America.

5. If the Party complained against considers that:

(a) the level of benefits that the complaining Party has 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 original panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties to the dispute within 90 days after it reconvenes to review a request under either subparagraph (a) or (b), or within 120 days for a request under both 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.

6. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel

has not determined the level, the level the 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. If the Party complained against comprises two or more Republics of Central America, and the panel decides that one or more has complied, the complaining Party shall immediately terminate the suspension of benefits for such Republic or Republics of Central America.

Article 22.14. COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 22.13.5, 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 reconvene as soon as possible after delivery of the request and shall issue its report on the matter within 60 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the nonconformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 22.13.

Article 22.15. TIME LIMITS

1. All time limits laid down in this Chapter, including the limits for the panels to issue their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time limit referred to in this Chapter may be extended by agreement of the Parties.

Article 22.16. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

1. Each Party shall:

(a) designate an office that shall provide administrative assistance to the panels established under this Chapter and perform such other functions as the Joint Committee may direct;

(b) notify the Joint Committee of the location of its designated office; and

(c) be responsible for:

(i) the operation and costs of its designated office; and

(ii) the remuneration and payment of expenses of panelists and experts, as set out in Annex 22-A.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 22.17. REFERRAL OF MATTERS FROM JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties. The Joint Committee 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 Joint Committee to the court or administrative body in accordance with the rules of that forum.

3. If the Joint Committee is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 22.18. PRIVATE RIGHTS

No 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 22.19. 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 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

Chapter 23. EXCEPTIONS

Article 23.1. GENERAL EXCEPTIONS

1. For the purposes of Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures) and 6 (Technical Barriers to Trade), Article XX of 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 GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters 9 (Investment), 10 (Cross-border Trade in Services), 11 (Financial Services), 12 (Temporary Entry for Business Persons), 13 (Telecommunications) and 14 (Electronic Commerce), (1) Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) Article 23.1 is without prejudice to whether digital products should be classified as goods or services.

Article 23.2. ESSENTIAL SECURITY

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

Article 23.3. 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 2.2 (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 GATT 1994; and

(b) Article 2.12 (Export Duties, Taxes, or Other Charges) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Articles 10.2 (National Treatment) and 11.2 (National Treatment) shall apply to taxation measures on income, on 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 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporations, or taxes on estates, inheritances, gifts, and generation-skipping transfers; except that nothing in the Articles referred to in subparagraphs (a) and (b) shall apply:

(c) to any MFN obligation with respect to an advantage accorded by a Party pursuant to a 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 GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust or pension plan 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, paragraphs 2, 3, and 4 of Article 9.9 (Performance Requirements) shall apply to taxation measures.

6. (a) Article 9.17 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation.

(b) Article 9.7 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 9.7 as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation. An investor that seeks to invoke Article 9.7 with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 9.17.3 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. (2) 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 180 days of such referral, the investor may submit its claim to arbitration under Article 9.17.4.

(c) For the purposes of this paragraph, competent authorities means:

(i) for Korea, the Deputy Minister for Tax and Customs, Ministry of Strategy and Finance;

(ii) for Costa Rica, the Minister of Finance (Ministro de Hacienda);

(iii) for El Salvador, the Minister of Finance (Ministro de Hacienda);

(iv) for Honduras, the Secretary of State in the Office of Finance (Secretario de Estado en el Despacho de Finanzas);

(v) for Nicaragua, the Minister of Finance and Public Credit (Ministro de Hacienda y Crédito Público); and

(vi) for Panama, the Minister of Economy and Finance (Ministro de Economía y Finanzas), or their successors.

7. For the purposes of this Article, “taxes” and “taxation measures” do not include:

(a) a customs duty as defined in Article 1.6 (Definitions); or

(b) the measures listed in exceptions (b) and (c) of that definition.

(2) For greater certainty, Annex 9-E (Taxation and Expropriation) shall apply

Article 23.4. 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 23.5. MEASURES TO SAFEGUARD THE BALANCE OF PAYMENTS

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with GATT 1994, which includes the Understanding on Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures. In adopting such measures, the Party shall immediately consult with the other Party.

Chapter 24. FINAL PROVISIONS

Article 24.1. ANNEXES, APPENDICES, AND FOOTNOTES

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

Article 24.2. AMENDMENTS

The Parties may agree, in writing, to amend this Agreement. Unless otherwise agreed, any amendment shall enter into force 30 days after all the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures.

Article 24.3. 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 to consider amending the relevant provision of this Agreement, as appropriate, in accordance with Article 24.2.

Article 24.4. ACCESSION

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between the country or group of countries and the Joint Committee. Any accession shall enter into force 30 days or on such date as the Parties may agree, after all the Parties and the acceding country or group of countries exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures.

Article 24.5. ENTRY INTO FORCE

1. This Agreement shall enter into force for Korea and each Republic of Central America on the first day of the second month following the latter date on which Korea and the respective Republic of Central America have notified the other in writing that they have completed their internal procedures or on any other date as they may agree.

2. Each Party shall, upon the completion of its internal procedures for the entry into force of this Agreement, notify all the other Parties simultaneously in writing.

Article 24.6. WITHDRAWAL AND TERMINATION

1. Any Party may withdraw from this Agreement by means of a written notification to all the Parties. Unless otherwise agreed, the withdrawal shall take effect 180 days after the date on which the notification is received by all the Parties.

2. If one of the Republics of Central America withdraws, the Agreement shall remain in force for the remaining Parties. If Korea withdraws, this Agreement shall expire on the date specified in paragraph 1.

Article 24.7. RESERVATIONS AND INTERPRETATIVE DECLARATIONS

This Agreement does not allow unilateral reservations or unilateral interpretative declarations.

Article 27.8. AUTHENTIC TEXTS

The Korean, Spanish and English texts of this Agreement are equally authentic. In case of any divergence, the Parties shall resolve the inconsistency based on the English version of the texts.

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

DONE, at Seoul, this 21st day of February, 2018, in the Korean, Spanish, and English languages.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA:

FOR THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR:

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:

FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA:

FOR THE GOVERNMENT OF THE REPUBLIC OF PANAMA:

Annex I: Non-Conforming Measures of Services and Investment

Annex I SCHEDULE OF KOREA

EXPLANATORY NOTE

1. The Schedule of Korea to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), Korea's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-FavoredNation Treatment);

(c) Article 10.4 (Market Access);

(d) Article 10.5 (Local Presence);

(e) Article 9.9 (Performance Requirements); or

(f) Article 9.10 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligation Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13.1(a) (Non-Conforming Measures) and 10.6.1(a) (Non-Conforming Measures), shall not apply to the nonconforming aspects of the law, regulation, or other measures, as set out in paragraph 3;

(c) Measures (1) identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(d) Description sets out commitments, if any, for liberalization on the date of entry into force of this Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant Articles of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 9.13.1(a) (Non-Conforming Measures) and 10.6.1(a) (Non-Conforming Measures) and subject to Articles 9.13.1(c) and 10.6.1(c), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

5. Where Korea maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), or 10.5 (Local Presence) shall operate as a Schedule entry with respect to Article 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), or 9.9 (Performance Requirements) to the extent of that measure.

6. A “foreign person” means a foreign national or an enterprise organized under the laws of another country.

7. For greater certainty, Articles 10.2 (National Treatment) and 10.5 (Local Presence) are separate disciplines and a measure that is only inconsistent with Article 10.5 (Local Presence) need not be reserved against Article 10.2 (National Treatment).

(1) For greater certainty, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Article 9.13.1 and Article 10.6.1.

Annex I SCHEDULE OF COSTA RICA

EXPLANATORY NOTE

1. The Schedule of Costa Rica to this Annex sets out, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), Costa Rica´s existing measures that are not subject to some or all of the obligations imposed by:

(a) Articles 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Articles 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-FavoredNation Treatment);

(c) Article 10.5 (Local Presence);

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), do not apply to the listed measure(s) pursuant to paragraph 3;

(c) Level of Government indicates the level of government maintaining the listed measure(s);

(d) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any

discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the law, regulation, or other measure identified in the Measures element of that entry.

5. Where Costa Rica maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), or 10.5 (Local Presence) shall operate as a Schedule entry with respect to Article 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), or 9.9 (Performance Requirements) to the extent of that measure.

6. For greater certainty, Article 10.4 (Market Access) refers to non-discriminatory measures.

7. The listing of a measure in this Annex is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

8. The extraction of natural resources (including mining and hydrocarbons), electricity generation, refining of crude oil and its derivatives, hunting, forestry, logging, and fishing shall not be considered as services for the purposes of this Agreement.

Annex I SCHEDULE OF EL SALVADOR

EXPLANATORY NOTE

1. The Schedule of El Salvador to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), El Salvador's existing measures that are not subject to some or all of the obligations imposed by:

(a) Articles 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Articles 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.5 (Local Presence);

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), do not apply to the listed measure(s);

(c) Level of Government indicates the level of government maintaining the listed measure(s);

(d) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any

discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Article 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the law, regulation, or other measure identified in the Measures element of that entry.

5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), or 10.5 (Local Presence) shall operate as a Schedule entry with respect to Article 9.3 (National Treatment), 9.4 (Most-FavoredNation Treatment), or 9.9 (Performance Requirements) to the extent of that measure.

6. For greater certainty, Article 10.4 (Market Access) refers to non-discriminatory measures

Annex I SCHEDULE OF HONDURAS

EXPLANATORY NOTE

1. The Schedule of Honduras to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), Honduras' existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.4 (Market Access);

(d) Article 10.5 (Local Presence);

(e) Article 9.9 (Performance Requirements); or

(f) Article 9.10 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligation Concerned, specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13.1(a) (Non-Conforming Measures) and 10.6.1(a) (Non-Conforming Measures) does not apply to the non-conforming aspects of the law, regulation, or other measures, as set out in paragraph 3;

(c) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(d) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 9.13.1 (a) (Non-Conforming Measures) and 10. 6.1(a) (Non-Conforming Measures) and subject to Articles 9.13.1(c) and 10.6.1(c), the Articles of this Agreement specified in the Obligations Concerned element of an entry

do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

5. Where Honduras maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), or 10.5 (Local Presence) shall operate as a Schedule entry with respect to Article 9.3 (National Treatment), 9.4 (Most-FavoredNation Treatment), or 9.9 (Performance Requirements) to the extent of that measure.

Annex I SCHEDULE OF NICARAGUA

EXPLANATORY NOTES

1. The Schedule of Nicaragua to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), Nicaragua's existing measures that are not subject to some or all of the obligations imposed by:

(a) Articles 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Articles 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.5 (Local Presence);

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), do not apply to the listed measure(s);

(c) Level of Government indicates the level of government maintaining the listed measure(s);

(d) Measures identify the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Article 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry shall not apply to the law, regulation, or other measure identified in the Measures element of that entry.

5. Where a Party maintains a measure that requires that a service provider be a citizen as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), or 10.5 (Local Presence) shall operate as a Schedule entry with respect to Article 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), or 9.9 (Performance Requirements) to the extent of that

measure.

6. For greater certainty, Article 10.4 (Market Access) refers to non-discriminatory measures.

Annex I SCHEDULE OF PANAMA

EXPLANATORY NOTES

1. The Schedule of Panama to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), Panama's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.5 (Local Presence);

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each reservation sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector refers to the specific sector in which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), do not apply to the non-conforming aspects of the law, regulation, or other measure;

(d) Measure identifies a law, regulation or other measure for which the entry is made. A measure cited in the Measure element:

i. means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and

ii. includes a subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description provides an overview of the measures.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant articles of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry, do not apply to law, regulation or other measure identified in the Measures element of that entry.

5. Where Panama maintains a measure that requires a service provider be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a reservation for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation) or 10.5 (Local Presence) operates as a reservation with respect to Article 9.3 (National Treatment), 9.4 (Most-Favored-Nation) or 9.9 (Performance Requirements) to the extent of that measure.

6. For the purposes of this Agreement, Panama understands that: fishing and related activities in Panamanian jurisdictional waters shall not be considered service and therefore need not be listed in Annexes I and II with respect to the obligations of Chapter 10 (Cross-Border Trade in Services).

Annex II: Non-Conforming Measures of Services and Investment

Annex II SCHEDULE OF KOREA

EXPLANATORY NOTE

1. The Schedule of Korea to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Korea may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-FavoredNation Treatment);

(c) Article 10.4 (Market Access);

(d) Article 10.5 (Local Presence);

(e) Article 9.9 (Performance Requirements); or

(f) Article 9.10 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligation Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13.2 (Non-Conforming Measures) and 10.6.2 (Non-Conforming Measures), do not apply to sectors, subsectors, or activities set out in the Schedule;

(c) Description sets out the scope of the sectors, sub-sectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 9.13.2 (Non-Conforming Measures) and 10.6.2 (NonConforming Measures), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

4. A “foreign person” means a foreign national or an enterprise organized under the laws of another country.

5. For greater certainty, Articles 10.2 (National Treatment) and 10.5 (Local Presence) are separate disciplines and a measure that is only inconsistent with Article 10.5 (Local Presence) need not be reserved against Article 10.2 (National Treatment).

Annex II SCHEDULE OF COSTA RICA

EXPLANATORY NOTE

1. The Schedule of Costa Rica to this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), the reservations adopted for specific sectors, sub-sectors, or activities for which Costa Rica may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Articles 9.2 (National Treatment) or 10.3 (National Treatment);

(b) Articles 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-FavoredNation Treatment);

(c) Article 10.5 (Local Presence);

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each entry in the Schedule sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry; and

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

4. In interpreting a reservation in the Schedule, all elements of the entry shall be considered. The Description element shall prevail over the other elements.

Annex II SCHEDULE OF EL SALVADOR

EXPLANATORY NOTE

1. The Schedule of El Salvador of this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Articles 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Articles 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.5 (Local Presence)

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), shall not apply to the sectors, subsectors, or activities listed in the entry;

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Article 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry shall not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

Annex II SCHEDULE OF HONDURAS

EXPLANATORY NOTE

1. The Schedule of Honduras of this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which Honduras may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.4 (Market Access);

(d) Article 10.5 (Local Presence);

(e) Article 9.9 (Performance Requirements); or

(f) Article 9.10 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligation Concerned, specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13.2 (Non-Conforming Measures) and 10.6.2 (NonConforming Measures), shall not apply to sectors, subsectors, or activities set out in the Schedule;

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 9.13.2 (Non-Conforming Measures) and 10.6.2 (NonConforming Measures), the Articles of this Agreement specified in the Obligations Concerned element of an entry shall not app

Annex II SCHEDULE OF NICARAGUA

EXPLANATORY NOTE

1. The Schedule of Nicaragua of this Annex sets out, pursuant to Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Articles 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Articles 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.5 (Local Presence)

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry;

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Article 9.13 (Non-Conforming Measures) and 10.6 (NonConforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry

Annex II SCHEDULE OF PANAMA

EXPLANATORY NOTES

1. The Schedule of Panama to this Annex sets out, pursuant Articles 9.13 (NonConforming Measures) and 10.6 (Non-Conforming Measures), the specific sectors, subsectors or activities for which Panama may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.3 (National Treatment) or 10.2 (National Treatment);

(b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);

(c) Article 10.5 (Local Presence);

(d) Article 9.9 (Performance Requirements);

(e) Article 9.10 (Senior Management and Boards of Directors); or

(f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector refers to the specific sector in which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant Articles 9.13 ((Non-Conforming Measures) and 10.6 (NonConforming Measures), do not apply to the sectors, subsectors or activities scheduled in the entry;

(d) Description sets out the scope of the sector, subsector or activities covered by the entry; and

(e) Existing Measure identifies, for transparency purposes, an existing measure applying to the sector, sub-sector or activities covered by the reservation.

3. In accordance with Articles 9.13.2 (Non-Conforming Measures) and 10.6.2 (NonConforming Measures), the articles of this Agreement specified in the obligations concerned element of a reservation, do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. In the interpretation of a reservation all its elements will be considered. The Description element shall prevail over the other elements.

5. For the purposes of this Agreement, Panama understands that: fishing and related activities in Panamanian jurisdictional waters shall not be considered service and therefore need not be listed in Annexes I and II with respect to the obligations of Chapter 10 (Cross-Border Trade in Services).