FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF CHINA (TAIWAN) AND THE REPUBLIC OF NICARAGUA

PREAMBLE

The Government of the Republic of China (Taiwan) and the Government of the Republic of Nicaragua resolved to:

STRENGTHEN the special bonds of friendship and cooperation between their nations and promote bilateral economic integration;

ACHIEVE a free trade zone by means of the creation of new and greater opportunities in terms of access for the current and potential exportable supply of goods and services;

PROMOTE economic complementarities between the Republic of China (Taiwan) and the Republic of Nicaragua by strengthening mutual cooperation and implementing specific projects on issues of priority to each of the two countries;

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

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

AVOID distortions to their reciprocal trade;

ESTABLISH clear and mutually advantageous rules governing their trade, by the establishment of mechanisms that avoid the application of unilateral and discretionary measures that unnecessarily affect the flow of trade;

ENSURE a predictable commercial framework for business planning and investment, by promoting and strengthening efforts to attract Taiwanese investments to the Republic of Nicaragua, and for the purpose of transferring technology that contributes to the development of the competitiveness of the Republic of Nicaragua's productive sectors;

BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation;

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

ENHANCE the competitiveness of their firms in global markets;

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

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

PROMOTE the economic and social development of their countries through the consolidation of economic liberalization, with the aim of generating economic growth and improving the population's standard of living;

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

CREATE new employment opportunities, improve working conditions and enhance the overall quality of life for their respective citizens;

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

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

PRESERVE their flexibility to safeguard the public welfare; and

RECOGNIZE the interest of the Republic of Nicaragua in strengthening and deepening their regional economic integration;

HAVE AGREED as follows:

Part One. General Aspects

Chapter 1. Initial Provisions

Article 1.01. Establishment of a Free Trade Area

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

Article 1.02. Objectives

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

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

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

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

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

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

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

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

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

Article 1.03. Relation to other Agreements

The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which the Parties are party. In the event of any inconsistency between the provisions of this Agreement and the provisions of the WTO agreement or other agreements to which both Parties are party, event of any inconsistency between the provisions of this Agreement and the provisions of the WTO agreement or other agreements to which both Parties are party, the provisions of this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 1.04. Relation to other International Agreement In Environment and Conservation

In the event of any inconsistency between this Agreement and the specific trade obligations set forth in:

(a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), done at Washington, March 3, 1973, as amended June 22, 1979;

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990 and November 25, 1992; or

(c) the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989.

these obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement. For this purpose, the Parties shall enforce the provisions set out in the instruments in subparagraph (a), (b) and (c).

Article 1.05. Extent of Obligations

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

Article 1.06. Successor Agreement

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which the Parties are party.

Chapter 2. General Definitions

Article 2.01. Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

AD Agreement means the WTO Agreement on Implementation of Article VI of the GATT 1994;

Commission means the Free Trade Commission established under Article 21.01 (The Free Trade Commission);

covered investment means, with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory by an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

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

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

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

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

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

(d) premium offered or collected on or in connection with an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

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

days means calendar days;

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

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing means in effect on the date of entry into force of this Agreement; GATS means the WTO General Agreement on Trade in Services; GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994;

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

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

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

measure means any measure by a Party including law, regulation, procedure, requirement, or practice;

national means a natural person who has the nationality of a Party according to Annex 2.01 or a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin and Related Customs Procedures);

Party means the Republic of China (Taiwan) or the Republic of Nicaragua; 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 rate of a customs duty applicable under this Agreement to an originating good;

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

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

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

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

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

TRIPS Agreement means the WTO Agreement on Trade Related Aspects of Intellectual Property Rights;

WTO means the World Trade Organization; and

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

Annex 2.01. Country-Specific Definitions

For purposes of this Agreement: natural person who has the nationality of a Party means:

(a) with respect to Republic of Nicaragua, a nicaragiiense as defined in Article 15 of the Constituci6n Politica de la Republica de Nicaragua; and

(b) with respect to the Republic of China (Taiwan) a person who has the nationality of the Republic of China (Taiwan) by birth or naturalization according to Article 3 of the Constitution and Article 2 of the Nationality Law of the Republic of China (Taiwan).

Part Two. Trade In Goods

Chapter 3. National Treatment and Market Access for Goods

Article 3.01. Scope and Coverage

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

Section A. National Treatment

Article 3.02. National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article Ill of the GATT 1994,

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

2. For purposes of paragraph 1, each Party shall grant the goods of the other Party the treatment no less favorable than the most favorable treatment granted by this Party to the like, directly competitive or substitutable goods of its national origin.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.03.7.

Section B. Customs Tariff Article

Article 3.03. Customs Tariff Elimination Schedule

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

2. Except as otherwise provided in this Agreement, on the date of entry into force of this Agreement the Parties shall progressively eliminate its customs duties on imported goods originating from the other Party, in accordance with Annex 3.03.

3. Paragraph 1 does not prevent a Party from increasing a customs duty to a level no higher than the one established in the Customs Tariff Elimination Schedule, when it has previously been reduced unilaterally to a level below the one established on the Customs Tariff Elimination Schedule. During the customs tariff elimination process the Parties shall undertake to apply in their trade of originating goods the lower customs tariff obtained by comparing the level established in accordance with its respective Customs Tariff Elimination Schedule and the level in force according to Article I of GATT 1994.

4. For greater certainty, a Party may:

(a) raise a customs duty back to the level established in its Schedule to Annex 3.03 following a unilateral reduction; or

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

5. No party may apply or maintain an agricultural safeguard measure:

(a) onor after the date that a good is subject to duty-free treatment under the Partyâs Schedule to Annex 3.03; or

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

6. Except as otherwise provided in paragraph 1 through 4, a Party could maintain, adopt or modify customs duties on goods excluded from the Customs Tariff Elimination Schedule as provided in Annex 3.03.

Article 3.04. Waiver of Customs Duties

A Party may maintain or 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 for such time as it is in Annex VII countries for purposes of the SCM Agreement. Thereafter, a Party shall maintain any such measures in accordance with Article 27.04 of the SCM Agreement.

Article 3.05. 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, trade, or professional activities;

(b) goods intended for display or demonstration;

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

(d) goods admitted for sporting 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 pursuant to the laws of the importing country.

3. No Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that such good:

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

(b) be accompanied by a security in an amount no greater than the duties and charges that would otherwise be owed on entry or final importation, reimbursable at the time the product leaves the country;

(c) be capable of identification wnen exported;

(d) be exported according to the national legislation of the Party; and

(e) be admitted in no greater quantity than is reasonable for its intended use.

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.

Article 3.06. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

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

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

(b) the entry of such samples and advertisement materials shall be governed by respective import regulations of the Parties.

Article 3.07. Goods Re-imported after Repair or Alteration

1. No Party may apply a customs duty to a good, regardless of its origin, that is re- imported into its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration.

2. No Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. The terms "re-imported into its territory" referred to in paragraph 1, and "imported temporarily" referred to in paragraph 2, shall be understood under the respective laws of the Parties.

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

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

(b) transforms an unfinished good into a finished good. Article 3.08 Customs Valuation

Upon the entry into force of this Agreement, the principles of customs valuation applied to regulating trade between the Parties shall be those established in the Customs Valuation Agreement of WTO, including its annexes. Besides, the Parties shall not determine the customs value of the goods based on the officially established minimum value.

Section C. Non-Tariff Measures

Article 3.09. Domestic Supports

1. The Parties recognize that domestic support measures could be of vital importance for their respective agricultural sectors, but also distort trade and affect production. In this respect, the Parties shall apply domestic supports in accordance with the WTO Agriculture Agreement and any other successor agreements to which the Parties are signatories. Where a Party decides to support its agricultural producers, it shall endeavor to achieve an domestic support policy that:

(a) has a minimal or no effect at all that distorts trade or production; or

(b) is in conformity with its respective agreements within the WTO.

2. In order to ensure transparency in their policies of support to agriculture, the Parties agree to undertake studies of such policies on an ongoing basis. For such purposes, the information acquired shall be used as the main reference in their

respective annual notifications to the Committee on Agriculture of the WTO and copies of the notifications may be exchanged upon request of a Party. Without prejudice to the foregoing, each Party may request additional information and explanations from the other Party. Such requests shall be immediately answered. The resulting information and evaluations may be, at the request of the other Party, subject to consultation with the Committee on Trade in Goods.

Article 3.10. Exports Subsidies

Except as otherwise provided in article 3.04, no Party may adopt or maintain export subsidies on goods in their reciprocal trade.

Article 3.11. Import and Export Restrictions

1. The Parties commit themselves to eliminate the non-tariff barriers to trade, with exception of the Parties' rights in accordance with Articles XX and XXI of GATT 1994.

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

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

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

(b) import licensing conditioned on the fulfillment of a performance requirement, except as provided in a Party's Schedule to Annex 3.03; or

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

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

(a) limiting or prohibiting the importation of goods to the non-Party from the territory of the other Party; or

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

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

6. Paragraphs 2 through 4 shall not apply to the measures set out in Annex 3.03.7.

Article 3.12. Administrative Fees and Formalities

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

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

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

Article 3.13. Export Taxes

No Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless such duty, tax, or charge is adopted or maintained on any such good when the supply is insufficient for domestic consumption.

Article 3.14. Obligations Under Intergovernmental Agreement

Before adopting a measure consistent with an intergovernmental agreement on products in accordance with paragraph (h) in Article XX of GATT 1994, which may affect trade in basic commodity between the parties, a Party shall consult with the other party to avoid nullification or impairment of concessions granted by a Party in accordance with Article 3.03.

Article 3.15. Committee on Trade In Goods

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

2. The Committee shall meet, on request of either Party or the Commission, to consider any matter arising from this Chapter, Chapter 4 (Rules of Origin and Related Customs Procedures), or Chapter 5 (Trade Facilitation).

3. The Committee's functions shall include:

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

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, submitting such matters to the Commission for its consideration.

Section D. Definitions

Article 3.16. Definitions

For purposes of this Chapter:

commercial samples of negligible value means commercial samples having a value, individually or as an aggregate shipment, of not more than one U.S. dollar, or the equivalent amount in the currency of the Party, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for 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 for or in connection with the import;

consumed means:

(a) actually consumed; or

(b) processed or manufactured in such a manner that it allows for substantial change in value, form, or use of the good or in the production of another good;

duty-free means free of customs duty;

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

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

goods temporarily admitted for sporting purposes means sports equipment for use in sports contests or events, or training in the territory of the Party into which such goods are admitted;

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, and tourist promotional materials and posters that are used to promote, publicize, or advertise a good or service, and are supplied free of charge;

temporary admission of goods means the temporary admission or temporary importation of goods or goods imported temporarily for repair or alteration.

Chapter 4. Rules of Origin and Related Customs Procedures

Section A. Rules of Origin

Article 4.01. Application and Interpretation Instruments

1. For purposes of this Chapter:

(a) the Harmonized System shall be the basis for the tariff classification of goods; and

(b) the principles and norms of the Customs Valuation Agreement shall be used to determine the value of a good or material.

2. For purposes of this Chapter, regarding the application of the Customs Valuation Agreement when determining the origin of a good:

(a) the principles and norms of the Customs Valuation Agreement shall be applied to domestic transactions as they would be applied to international transactions, with only the modifications required by circumstances; and

(b) the provisions contained in this Chapter shall prevail over the Customs Valuation Agreement to the extent of any inconsistency.

Article 4.02. Originating Goods

1. Except as otherwise provided in this Chapter, a good shall be considered originating in the territory of a Party where:

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

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

(c) it is produced entirely in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification, satisfy a regional value content or other requirements, as specified in Annex 4.02, and that the good complies with all other applicable provisions of this Chapter; or

(d) it is produced entirely in the territory of a Party, although one or more of the non-originating materials or parts provided for as parts under the Harmonized System that are used in the production of the good does not undergo a change in tariff classification for any of the following reasons:

(i) the good was imported into the territory of a Party in an unassembled or a disassembled form, and has been classified as an assembled good in accordance with the Rule 2(a) of the General Rules of Interpretation of the Harmonized System;

(ii) the good and its parts are classified under the same heading which describes specifically both the good itself and its parts, and that heading is not further divided into subheadings; or

(iii) the good and its parts are classified under the same subheading which describes specifically both the good itself and its parts;

provided that the regional value content of the good, determined in accordance with Article 4.06, is not less than thirty five percent (35%), and the good fulfills all other applicable requirements of this Chapter, unless the specific rule of origin applicable to the good pursuant to Annex 4.02, specifies a different requirement of regional value content, in which case that specific requirement shall be applied.

2. Notwithstanding other provisions of this Article, goods shall not be considered originating, if they are exclusively the outcome of the minimal operations or processes referred to in Article 4.03 and carried out in the territory of one or both of the Parties, unless the specific rules of origin of Annex 4.02 indicate otherwise.

Article 4.03. Minimal Operations or Processes

The minimal operations or processes that by themselves or in combination do not confer origin to a good are:

(a) operations for the preservation of a good in good condition during transportation or storage (such as aeration, ventilation, drying, refrigeration, freezing or keeping in brine);

(b) cleaning, washing, sieving, sifting, screening, selecting, classifying, grading or culling;

(c) peeling, hulling, stripping, husking, deboning, pressing, squeezing, filleting or soaking;

(d) elimination of dust or broken or damaged parts, application of oil, anti- oxidant paint or protective coating;

(e) testing or gauging, division of bulk shipments, bulking of packages, adhesion of brand names, labels or distinguishing signs on goods and their packaging;

(f) packing, unpacking or repacking;

(g) dilution in water or any other watery solution, or ionization and salting;

(h) simple putting together or assembly of parts of a good in order to constitute a complete good, the formation of sets and assortments of goods; and

(i) slaughter of animals. Article 4.04 Indirect Materials Indirect materials shall be considered as originating regardless to where there are produced or manufactured, and the value of these materials shall be the cost as registered in the accounting records of the producer of the good.

Article 4.05. Accumulation

1. The goods or materials originating from a Party and incorporated into a good in the territory of the other Party shall be considered as originating in the territory of that other Party.

2. A good is originating where the good is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements in Article 4.02 and all other applicable requirements in this Chapter.

Article 4.06. Regional Value Content

1. The regional value content of a good shall be calculated according to the following formula:

RVC = [(TV - VNM) / TV] * 100

Where

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

TV: is the transaction value of the good adjusted to an FOB basis, except as provided for in paragraph 2. If this value does not exist or cannot be determined in accordance with the principles and norms set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated in accordance with the principles and norms set forth in Article 2 through 7 of said Agreement; and

VNM : is the transaction value of the non-originating materials adjusted to a CIF basis, except as provided for in paragraph 5. If such value does not exist or cannot be determined in accordance with the principles and norms set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated in accordance with the principles and norms set forth in Articles 2 through 7 of said Agreement.

2. When the producer of a good does not export it directly, the value shall be adjusted to the point at which the buyer receives the good within the territory in which the producer is located.

3. When the origin is determined by the regional value content rule, the percentage required shall be specified in Annex 4.02.

4. All of the costs considered when calculating the regional value content shall be recorded and kept in accordance with Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

5. When the producer of a good acquires a non-originating material in the territory of the Party in which it is located, the value of the non-originating material shall not include freight, insurance, costs of packaging and any other costs incurred in transporting the material from the supplier's warehouse to the place where the producer is located.

6. For purposes of calculating the regional value content, the value of the non- originating materials used in the production of a good shall not include the value of the non-originating materials used in the production of originating materials acquired and used in the production of that good.

Article 4.07. De Minimis

Except as provided in Annex 4.07, a good is nonetheless originating if the value of all non-originating materials used in the production of the good that does not undergo the applicable change in tariff classification does not exceed ten percent of the value of the good. The value of such non-originating material shall, however, be included in the value of non-originating materials for any applicable regional value content requirement and that the good satisfies all other applicable requirements in this Chapter.

Article 4.08. Fungible Goods and Materials

1. Each Party shall provide that the origin of fungible goods or materials used in the production of a good shall be determined by:

(a) physical segregation of each good or material; or

(b) at the producer's choice, through the use of any of the following inventory management methods, recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed:

(i) first in first out (FIFO) method;

(ii) last in first out (LIFO) method; or

(iii) averaging method.

2. Once the inventory management method listed out in the preceding paragraph is selected, it shall be used during the entire period of a fiscal year.

Article 4.09. Accessories, Spare Parts and Tools

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

(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and

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

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

Article 4.10. Sets or Assortments

1. The sets or assortments of goods that are classified in accordance with rule 3 of the General Rules of the Interpretation of the Harmonized System, as well as goods whose description according to the nomenclature of the Harmonized System is specifically that of a set or assortment, shall qualify as originating, only if each good in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.02.

2. When sets or assortments are subject to regional value content requirements, their containers and packaging materials shall be considered originating or non- originating, as the case may be.

Article 4.11. Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.02 and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.12. Packing Materials and Containers for Shipment

Containers and packing materials in which the good is packed for shipment shall be disregarded in determining whether a good is originating.

Article 4.13. Transit and Transshipment

The originating goods of the other Party shall not lose such status when they are:

(a) transported directly from the territory of the other Party; or

(b) transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouses in such territory or territories, provided that they do not undergo any operations other than unloading, reloading or any other operation to preserve them in good condition and remain under the control of customs authority in the territory of a non-Party mentioned above.

Section Section B: Customs Procedures Related to Origin

Article 4.14. Certificate of Origin

1. For purposes of this Chapter, the Parties shall establish a single form of Certificate of Origin as provided in Annex 4.14, which shall enter into force with this Agreement and may, thereafter, be modified by mutual agreement.

2. The Certificate of Origin referred to in paragraph 1 shall be used to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as originating and satisfy all other requirements established in this Chapter.

3. The certifying authorities of each Party shall require its exporters or producers to complete and sign a Certificate of Origin for every exportation of goods for which an importer of the other Party may claim preferential tariff treatment.

4. The exporter or producer completing and signing a Certificate of Origin shall assume administrative, civil or criminal liability whenever the exporter includes false or incorrect information in the Certificate of Origin.

5. The certifying authority of each Party shall certify that the Certificate of Origin filled and signed by the exporter or producer of the good is completed correctly, based on the information provided by such exporter or producer, and shall verify that the exporter or producer has indeed complied with the requirements of this Chapter and is located in the territory of that Party.

6. Each Party shall require the Certificate of Origin be sealed, signed and dated by the certifying authority of the exporting Party with respect to the exportation of a good for which the importer may claim preferential tariff treatment. The Certificate of Origin shall also carry a serial number allowing its identification, which will be managed by the certifying authority.

7. The certifying authority of the exporting Party shall:

(a) adopt or maintain the administrative procedures for certifying the Certificate of Origin that its producer or exporter filled and signed;

(b) provide, if requested by the competent authority of the importing Party, information about the origin of the imported goods claiming the preferential tariff treatment; and

(c) notify in writing before this Agreement enters into force, the list of the names of the authorized officials and, where applicable, the list of authorized agencies to certify the Certificate of Origin, with the corresponding signatures and seals. Modifications to this list shall be notified immediately in writing to the other Party and shall enter into force 30 days after the date on which that Party receives that notification of the modification.

8. Each Party shall provide that a Certificate of Origin shall only be applicable to a single importation of one or more goods into the territory of that Party.

9. Each Party shall provide that a valid Certification of Origin be accepted by the customs authority of the importing Party for a period of one year from the date on which the certificate was signed and sealed by the certifying authority.

10. Each Party shall provide that the preferential tariff treatment shall not be denied only because the good covered by a Certificate of Origin is invoiced by an enterprise located in the territory of a non-Party.

11. The Parties shall, in the second year from the date on which this Agreement entry into force, review the certifying

procedures with a view to confirm whether it would be more beneficial to the Parties to convey to an auto-certification process, rather than requiring any agency to perform the certification. If it is agreed by both Parties, the exporter or producer will be the one responsible to certify the origin without the certifying agency of each Party being the one required to perform the certification.

Article 4.15. Obligations Regarding Importations

1. A Party shall require that the importer who claims preferential tariff treatment for a good imported into its territory from the territory of the other Party should:

(a) declare in writing in the importation document required by its legislation, based on a valid Certificate of Origin, that a good qualifies as an originating good;

(b) have the Certification of Origin in his possession at the time the declaration is made;

(c) provide, if requested by its customs authority, the Certificate of Origin or its copy ; and-

(d) promptly make a corrected declaration and pay any duties owing where the importer has reasons to believe that the Certificate of Origin on which a customs declaration was based contains incorrect information. Where the importer presents a corrected declaration before the customs authority notifies a revision process, according to the domestic laws of each Party, the importer may not be penalized.

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

3. A Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation that importer may, not later than four months from the date of the release of the imported good, request a refund of the tariff duties paid in excess as a result of not having requested the preferential tariff treatment for that good, provided that the importer has the Certificate of Origin in his/her possession and the request is accompanied by:

(a) a written declaration, indicating that the good qualifies as originating at the time of importation;

(b) the Certificate of Origin or its copy ; and

(c) any other documentation related to the importation of the good, as the customs authority may require.

4. Compliance with the provisions of previous paragraphs of this Article does not exempt the importer from the obligation to pay the corresponding customs duties according to the applicable laws of the importing Party, when the competent authority of that Party conclude an origin verification and determines to deny the preferential tariff treatment to goods imported, according to Article 4.19

Article 4.16. Obligations Regarding Exportations

1. Each Party shall require its exporter or producer that has filled and signed a Certificate of Origin to submit a copy of such Certificate to its competent authority upon request.

2. Each Party shall require its exporter or producer, that has completed and signed a Certificate of Origin or provided information for his/her certifying authority, and has reasons to believe that such Certificate contains incorrect information, to notify promptly in writing:

(a) all persons who have received that Certificate; and

(b) its certifying authority,

of any change that may affect the accuracy or validity of that Certificate, in such case the exporter or producer may not be penalized for having provided an incorrect certificate or information according to domestic laws of each Party.

3. Each Party shall require that if a false Certificate or information provided by its exporter or producer results in the good being exported to the territory of the other Party qualified as originating, such exporter or producer shall be subject to similar penalties as would apply to an importer in its territory for violating its customs laws and regulations by making false declarations or statements.

4. The certifying authority of the exporting Party shall provide the competent authority of the importing Party with the

notification referred to in paragraph 2.

Article 4.17. Records

1. Each Party shall provide that:

(a) its exporter or producer who requests a Certificate of Origin and provides information for its certifying authority shall maintain, for at least five years from the date on which the Certificate is signed, all records and documents related to the origin of the goods, including those concerning:

(i) the purchase, costs, value, and payment of the good exported from its territory,

(ii) the purchase, costs, value and payment of, all materials, including indirect ones, used in the production of the good exported from its territory, and

(iii) the production of the good in the form in which it is exported from its territory;

(b) an importer who claims preferential tariff treatment for a good imported into that Party's territory shall maintain a copy of the Certificate of Origin and other documentation relating to the importation for at least five years from the date of importation of the good; and

(c) the certifying authority of the exporting Party that has issued a Certificate of Origin shall maintain all documentation relating to the issuance of the Certificate for a minimum period of five years from the issuing date of the Certificate.

2. A Party may deny the preferential tariff treatment to an imported good subject to an origin verification, if the exporter, producer or importer of the good who should maintain records or documents in accordance with paragraph 1:

(a) does not have the records or documents for determining the origin of the good, in accordance with the provisions of this Chapter; or

(b) denies access to the records or documents.

Article 4.18. Confidentiality

1. Each Party shall maintain the confidentiality of confidential information collected pursuant to this Chapter and shall protect that information from disclosure, in accordance with its legislation.

2. The confidential information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and for customs and revenue matters in accordance with each Partyâs legislation.

Article 4.19. Origin Verifications

1. The importing Party, through its competent authority, may request information about the origin of a good from the certifying authority of the exporting Party. The competent authority of the importing Party may also request its embassy in the territory of the other Party for assistance in those matters.

2. For purposes of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment according to this agreement qualifies as originating, a Party may verify the origin of the good through its competent authority by means of:

(a) written questionnaires or requests for information sending directly to the exporter or producer in the territory of the other Party;

(b) verification visits to the premises of the exporter or producer in the territory of the other Party to review the records and documents referred to in Article 4.17, and to inspect the materials and facilities used in the production of the good in question; or

(c) other procedures as the Parties may agree to.

3. For the purposes of this Article, the questionnaires, requests, official letters, determinations of origin, notifications or any other written communications sent by the Competent Authority to the exporter, producer or importer, for origin verification, shall be considered valid, provided that they are done by the following means:

(a) certified mails with receipts of acknowledgement or other ways that confirm that the exporter, producer or importer has received the documents;

(b) official communications through the embassies of the Parties whenever the competent authority requires; or

(c) any other way as the Parties may agree to.

4. In a written questionnaire or request for information referred to in paragraph 2 a) it shall:

(a) indicate the time period, which shall be no less than 30 days from the date of receipt, that the exporter or producer has to duly complete and return the questionnaire or provide the information requested; and

(b) include the notification of intention to deny the preferential tariff treatment, in case the exporter or producer does not duly complete and return the questionnaire or provide the information requested within such time period.

5. The exporter or producer who receives a questionnaire or request for information according to paragraph 2 a) shall duly complete and return the questionnaire or respond to the request for information within the time period established in paragraph 4 a) from the date of receipt. During that time period, the exporter or producer may make a written request of extension to the competent authority of the importing Party for an extension of no more than 30 days. Such request shall not have the consequence of denial of the preferential tariff treatment.

6. Each Party shall provide that, even though the answered questionnaire or information requested referred to in paragraph 5 has been received within the specified period of time provided in paragraph 4 and 5, it may still ask through its competent authority for additional information from the exporter or producer, by means of a subsequent questionnaire or request of information. In such cases the exporter or producer shall answer the questionnaire or respond to the request within 30 days from the date of receipt.

7. In case the exporter or producer does not duly complete a questionnaire, or does not return the questionnaire or provide the information requested within the time period established in paragraphs 4 a), 5 and 6 above, the importing Party may deny the preferential tariff treatment to the goods subject to verification, by issuing a written determination of origin, including facts and the legal basis for that determination, to the importer, exporter or producer.

8. Prior to conducting a verification visit according to paragraph 2 b), the importing Party shall, through its competent authority, provide a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer to be visited, to the certifying authority and the competent authority of the Party in whose territory the visit will be conducted, and, if necessary, to the Embassy of the other Party in the territory of the importing Party. The competent authority of the importing Party shall request the written consent from the exporter or producer to be visited.

9. The notification referred to in paragraph 8 shall include:

(a) the name of the competent authority that sends the notification;

(b) the name of the exporter or producer to be visited;

(c) the date and place of the proposed verification visit;

(d) the objective and scope of the verification visit, including the specific reference to the goods subject to verification;

(e) the names and positions of the officers conducting the verification visit; and

(f) the legal basis for carrying out the verification visit.

10. Any modification of the information referred to in the preceding paragraph shall also be notified according to paragraph 8.

11. If the exporter or producer has not given his written consent to a proposed verification visit within the 30 days of the written notification as provided in paragraph 8 and 9, the importing Party may deny the preferential tariff treatment to the good or goods by notifying in writing the importer, exporter or producer a determination, including facts and the legal basis for such denial.

12. Each Party shall provide that, when an exporter or producer receives a notification as provided in paragraph 8 and 9, that exporter or producer may, within 15 days of receipt of the notification, notify in writing the Competent Authority of the importing Party, its certifying authority and competent authority, to postpone only for once the proposed verification visit for a period no longer than 60 days from the date the notification was received, or for a longer period as the Parties may agree to.

13. The Parties shall not deny the preferential tariff treatment to a good solely because a verification visit is postponed according to paragraph 12.

14. Each Party shall permit an exporter or producer who is the subject of a verification visit to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. Nevertheless, the failure of designating the observers by the exporter or producer shall not be a cause for postponing the visit.

15. Each Party shall require that an exporter or a producer provides the records and documents referred to in paragraph 1 a) of Article 4.17 to the competent authority of the importing Party conducting a verification visit. If the records and documents are not in the possession of the exporter or producer, he shall request the producer or supplier of the materials to deliver them to the competent authority mentioned above.

16. When the competent authority of the importing Party verifies whether the regional value content, the de minimis calculation or any other requirements established under this Chapter has been fulfilled, it shall adopt, where applicable, the generally accepted accounting principles applied in the territory of the Party from which the good under verification was exported.

17. Once the verification visit has been concluded, the competent authority of the importing Party shall make a report of the visit, which shall include the facts confirmed by it. The exporter or producer may sign on this report.

18. Within a period of 120 days from the conclusion of the process of any of the verification methods provided in paragraph 2, the competent authority shall issue a written determination of origin, including the facts, results and the legal basis for such determination, and sent to the importer, exporter or producer of the good subject to verification according to paragraph 3, to determine whether or not the good qualified as originating.

19. Where through a verification the importing Party determines that an exporter or a producer has provided more than one time false or unfounded information in the Certificate of Origin or stating that a good qualifies as originating, the importing Party may suspend the preferential tariff treatment to the identical goods imported, exported or produced by that person, until it is confirmed that such person has been in compliance with all the requirements under this Chapter. The suspension and resumption of the preferential tariff treatment shall be accompanied by a written notification, including facts and the legal basis, to the importer, exporter or producer.

20. When the competent authority of the importing Party determines that a good imported into its territory does not qualify as originating, according to the tariff classification or the value applied by the Party to one or more materials used in the production of the good, which differs from the classification or the value applied to the materials by the Party from which the good was exported, that Party shall provide that its origin determination shall not take effect until it has been notified in writing to the certifying authority of the exporting Party, to the importer of the good, to the person that has filled and signed the Certificate of Origin, as well as to the producer of the good.

21. A Party shall not apply a determination issued under paragraph 20 to an importation made before the date of entry into force of the determination where:

(a) the competent authority of that Party from whose territory the good was exported, had issued a determination on the tariff classification or on the value of the materials, on which a person is entitled to rely; and

(b) the determination mentioned in the preceding subparagraph was issued prior to the notification of the origin verification.

Article 4.20. Advance Rulings

1. Each Party shall, through its competent authority, expeditiously provides a written advance ruling, prior to the importation of a good into its territory. The advance ruling shall be issued in response to a written application made by an importer in its territory or an exporter or producer in the territory of the other Party, based on the facts and circumstances showed by such importer, exporter or producer of the good, with respect to:

(a) whether the good qualifies as originating according to this Chapter;

(b) whether the non-originating materials used in the production of the good have undergone the applicable changes on tariff classification established in Annex 4.02;

(c) whether the good fulfills the requirement of regional value content established in this Chapter and in Annex 4.02; and

(d) whether the method applied by an exporter or producer in the territory of the other Party, according to the norms and

principles of the Customs Valuation Agreement, to calculate the transaction value of a good or of the materials used in the production of the good, with respect to which an advance ruling is being requested, is adequate for demonstrating whether the good satisfies a regional value content requirement according to this Chapter and in Annex 4.02.

2. Each Party shall establish directives for the issuance of advance rulings, including:

(a) the obligation of the importer to provide reasonable information required to process an application for such ruling;

(b) the mandate of the competent authority to ask at any time for additional information from the person who applies for an advance ruling, while evaluating such application;

(c) the obligation of the competent authority to issue an advance ruling within a maximum period of 120 days, once all the necessary information has been collected from the applicant; and

(d) the obligation of the competent authority to issue an advance ruling ina completed, well-founded, and reasoned manner.-

3. Each Party shall apply an advance ruling to the imports concerned, from the date on which the ruling is issued or a later date indicated in the ruling, unless such ruling has been modified or revoked according to paragraph 5.

4. Each Party shall provide any person who applies an advance ruling the same treatment, including the same interpretation and application of the provisions of this Chapter, regarding the determination of origin as provided for any other person, to whom an advance ruling has been issued, whenever the facts and circumstances are identical in all substantial aspects.

5. An advance ruling may be modified or revoked by the issuing competent authority:

(a) where it is based on an error: (i) in fact,

(ii) in the tariff classification of the good or materials which is the subject of the ruling, or

(iii) in the application of the regional value content requirement according to this Chapter;

(b) where the ruling is not in accordance with the interpretation agreed by the Parties with respect to this Chapter ;

(c) where there is a change in the facts or circumstances on which the ruling is based;

(d) for the purpose of conforming with a modification of this Chapter; or

(e) for the purpose of complying with an administrative decision independent from the issuing authority, or a judicial decision or to adjust to a change in the national legislation of the Party that issued the advance ruling.

6. Each Party shall provide that any modification or revocation of an advance ruling shall enter into force from the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to the importation of a good having occurred prior to that date, unless the person to whom the advance ruling was issued has not acted according to its terms and conditions. Nevertheless the effective date of modification or revocation of the advance ruling can be postponed for a period not exceeding 30 days when the advance ruling was based on an error by the competent authority.

7. Each Party shall provide that, when its competent authority verifies the origin of a good with respect to which an advance ruling has been issued, that authority shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advance ruling;

(b) the operations of the exporter or producer are consistent with the facts and circumstances on which the advance ruling is based; and

(c) the data and calculations used in the application of criteria or methods to calculate the regional value content are correct in all substantial aspects.

8. Each Party shall provide that, when its competent authority determines that any of the requirements established in paragraph 7 has not been fulfilled, that authority may modify or revoke the advance ruling as the circumstances warrant.

9. Each Party shall provide that, where a person to whom an advance ruling has been issued demonstrates that he had acted with reasonable care and in good faith while stating the facts and circumstances on which the ruling was based, that person shall not be penalized whenever the issuing authority determines that the ruling was based on incorrect information.

10. Each Party shall provide that, where an advance ruling has been issued to a person who had falsely stated or omitted substantial facts or circumstances on which the ruling was based, or has not acted in accordance with the terms and conditions of the ruling, the competent authority may apply measures against that person according to the legislation of each Party.

11. The Parties shall provide that the holder of an advance ruling may use it solely while the facts or circumstances on which the ruling was based are maintained. In case those facts or circumstances have changed, the holder of the ruling shall be allowed to present information necessary for the issuing authority to modify or revoke it according to paragraph 5.

12. Any good subject to an origin verification or a request of review or appeal in the territory of one of the Parties, shall not be the subject of an advance ruling.

Article 4.21. Penalties

Each Party shall establish or maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations related to the provisions of this Chapter.

Article 4.22. Review and Appeal

1. Each Party according to its domestic legislation shall grant the exporters or producers of the other Party the same rights to review and appeal the determinations of origin and the advance rulings issued to its importers.

2. The rights referred to in paragraph 1 include access to an administrative review, independent from the official or office responsible for the determination or advance ruling under review, and a judicial review of the determination or ruling as the final instance, according to the legislation of each Party.

Article 4.23. Definitions

For purposes of this Chapter:

certifying authority means in the case of the Republic of China (Taiwan), the Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs (MOEA), or its successor, or other agencies as authorized by BOFT or their successors; in the case of the Republic of Nicaragua, the Centro de Tramite de las Exportaciones (CETREX) , Ministerio de Fomento, Industria y Comercio (MIFIC) or its successor, or other agencies as authorized by MIFIC or their successor ;

CIF means value of the imported good, including the costs of insurance and freight to the port or place of entry in the importing country;

commercial imports means the importation of a good into the territory of a Party for the purpose of selling or using it for business, industrial or other similar purposes;

competent authority means in the case of the Republic of China (Taiwan), the Customs Authority under the Ministry of Finance, or its successor; in the case of the Republic of Nicaragua, the Direccion General de Servicios Aduaneros (DGA), or its successor;

confidential information means that information of a confidential nature that has not previously been published, is not available to third parties, or is otherwise not public knowledge;

determination of origin means a decision issued as a result of an origin verification procedure that determines whether a good qualifies as originating;

exporter means a person located in the territory of a Party from which the good is exported and who is under the obligation of keeping all records referring to Article 4.17 in the territory of that Party;

FOB means free on board, regardless of the mode of transportation, at the point of final shipment by the seller to the buyer;

fungible goods means goods that are interchangeable for commercial purposes and whose properties are essentially identical and thus impossible to distinguish by simple visual inspection;

Generally Accepted Accounting Principles means the principles used in the territory of each Party, which provide substantial authorized support with respect to recording of revenues, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

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

(a) mineral goods extracted or taken in the territory of one or both Parties;

(b) vegetable products harvested, picked or gathered in the territory of one or both Parties;

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

(d) goods obtained by hunting, trapping, fishing, gathering or capturing in the territory of one or both Parties;

(e) fish, shellfish and other marine species taken from the sea in territorial waters and marine zones outside the jurisdiction of the Parties, by vessels registered or recorded with a Party and flying its flag or by vessels hired by firms established in the territory of a Party;

(f) goods produced on board factory ships from the goods referred to in subparagraph e), provided that such factory ships are registered or recorded with that Party and fly its flag or by factory ships hired by firms established in the territory of that Party;

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

(h) waste and scrap derived from:

(i) production in the territory of one or both Parties, or

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

(i) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs a) through h) above;

identical goods means "identical goods", as defined in the Customs Valuation Agreement;

importer means a person located in the territory of a Party from which the good is imported and who is under the obligation of keeping all records referring to Article 4.17 in that Party's territory;

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

(a) fuel, energy, catalysts and solvents;

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

(c) gloves, glasses, footwear, clothing and 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 or maintain buildings; and

(g) any other good or material that is not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good used in the production or transformation of another good, including components, inputs, raw material, spare parts and parts;

origin verification process means an administrative process that begins with the initial notification of the verification procedure on the part of the competent authority of a Party and concludes with the final decision on determination of origin;

preferential tariff treatment means the application of the corresponding rate of customs duty for an originating good in accordance with the Customs Tariff Elimination Schedule.

producer means a person located in the territory of a Party and who is under the obligation of keeping all records referring

to Article 4.17 in that Party's territory;

production means growing, mining, harvesting, birth and breeding, hunting, manufacturing, processing or assembling a good;

transaction value of a good means the price actually paid or payable for a good with respect to a transaction of the producer of the good pursuant to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of said Agreement, regardless of whether the good is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Agreement shall be the producer of the good;

transaction value of a material means the price actually paid or payable for a material with respect to a transaction of the producer of the good pursuant to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of said Agreement, regardless of whether the material is sold for export. For purposes of this definition, the seller referred to in the Customs Valuation Agreement shall be the producer of the material; and

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

Chapter 5. Trade Facilitation

Article 5.01. Objectives and Principles

1. With the objective of facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives on a multilateral and bilateral basis, the Parties agree to administer their import and export processes for goods traded under this Agreement, so as to ensure that:

(a) procedures be efficient in order to reduce costs for importers and exporters, and simplified where appropriate to achieve said efficiency;

(b) procedures be based on international trade instruments or standards to which the Parties have in place in their legislation;

(c) import and export procedures be transparent to ensure predictability for importers and exporters;

(d) measures to facilitate trade also support mechanisms to protect human, animal or plant life or health through effective enforcement of and compliance with national requirements;

(e) the personnel and procedures involved in those processes reflect high standards of integrity;

(f) the development of significant modifications to procedures used by either Party be carried out in consultations with representatives of the trade community of that Party in accordance with their legislation;

(g) procedures be based to the extent possible on risk assessment principles in order to focus compliance efforts on transactions that warrant attention, thereby promoting effective use of resources and providing incentives for voluntary compliance with the obligations of by importers and exporters; and

(h) the Parties encourage cooperation, technical assistance and exchange of information, including information on best practices, for the purpose of promoting the implementation of and compliance with the trade facilitation measures agreed upon under this Agreement.

Article 5.02. Specific Obligations

1. The Parties confirm their rights and obligations under Article V (Freedom of Transit), Article VIII (Fees and Formalities Connected with Imports and Exports) and Article X (Publication and Implementation of Trade Regulations) of the GATT of 1994 and any successor agreement thereof.

2. Each Party shall endeavor to expedite procedures for the release of merchandise, particularly of those not subject to restrictions or controls.

3. The Parties recognize that the release of certain goods or under certain circumstances involving goods subject to quotas or human, animal, plant life or health related, or public safety requirements, may require submission of more extensive information before or upon arrival of such goods, to enable their customs authorities to examine the goods to be released.

4. The Parties shall facilitate and simplify the formalities and procedures to release low-risk goods and improve clearance control of high-risk goods. For such purposes, the Parties shall base their inspection and release procedures, as well as post-entry verification procedures, on risk assessment principles thus ensuring compliance with all importation requirements. This shall not preclude the Parties from conducting quality control and compliance reviews that may require more extensive inspections.

5. For purposes of facilitating trade, the Parties shall ensure coordinated procedures and activities among the various agencies that require compliance with goods importation and exportation requirements, directly or on their behalf by their customs authorities. In this respect, each Party shall undertake, to the extent possibly, all steps necessary to harmonize the data requirements of such agencies, with a view toward enabling importers and exporters to submit all required data to a single entity.

6. The Parties shall adopt or maintain simplified clearance procedures for low- value goods, for which the revenue associated with such imports is not considered significant by the Party that implements such expedited procedures.

7. The Parties shall endeavor to achieve common processes and simplification of the required data for the release of goods, and it shall apply, where appropriate, the international standards in force. To this end, each Party shall endeavor to establish the means for electronic exchange of information between its customs authorities and the trading community in order to set up expedited release procedures. For the purposes of this Article, the Parties shall use formats based on international standards for electronic exchange of data.

8. The Parties shall set up formal consultation mechanisms with their own trade and business community to promote greater cooperation and the electronic exchange of data.

9. The Parties shall ensure expeditious review of any administrative action or official decision taken in respect of the importation or exportation of goods, in conformity with their respective laws, by an administrative, arbitration or judicial bodies independent of the authority that adopted the action or decision and is competent to maintain, modify or revoke such action or decision. Prior to requiring a person to seek redress at a more formal or judicial level, the Parties shall provide an administrative recourse to appeal or review, independent of the official or, where applicable, the office responsible for the original action or decision.

10. The Parties shall expeditiously publish or otherwise make available, including through electronic means, their laws, regulations, judicial decisions and administrative rulings or policies of general application relating to their requirements for imported or exported goods. They shall also make available administrative notices such as general agency requirements related to customs operations and entry procedures, operation schedule and inquiry points to request information.

11. Each Party, in accordance with its laws, shall designate as strictly confidential all business information that is of a confidential nature or provided on a confidential basis with due explanation.

Article 5.03. Cooperation

1. The Parties recognize that technical cooperation is an essential element to facilitate compliance with the obligations set forth in this Agreement and reach a higher degree of trade facilitation.

2. The Parties, through their respective customs authorities, agree to develop a technical cooperation program under mutually agreed terms concerning the scope, timetable and cost of cooperation measures in customs-related areas, such as, inter alia:

(a) training;

(b) risk management;

(c) prevention and detection of smuggling and illicit activities;

(d) implementation of the Customs Valuation Agreement;

(e) audit and verification frameworks;

(f) electronic exchange of information; and

(g) advance rulings.

Article 5.04. Future Work Program

1. For the purpose of undertaking further steps to facilitate trade under this Agreement, the Parties agree to establish the following work program:

(a) to develop a Cooperation Program to implement the obligations under Chapter 4 (Rules of Origin and Related Customs Procedures) for the purpose of facilitating compliance with the obligations set forth in this Agreement; and

(b) to identify and submit to the Commission, where appropriate, new measures intended to promote trade facilitation among the Parties, taking as a basis the objectives and principles set forth in Article 5.01 and 5.02, including, inter alia:

(i) common customs procedures;

(ii) general measures to facilitate trade;

(iii) import and export controls ;

(iv) transport;

(v) promotion and implementation of regulations;

(vi) use of automated systems and electronic data interchange (EDI);

(vii) availability of information;

(viii) customs and other official procedures concerning the clearance of transportation means;

(ix) simplification of the required information for clearance of goods; transit of goods;

(x) trade practices; and

(xi) payment procedures for customs duties and charges.

2. The Parties may periodically review the work program referred to in this Article, for the purpose of reaching agreement on new avenues of cooperation that may result necessary to facilitate compliance with trade facilitation obligations and principles, including new procedures that may be agreed by the Parties.

3. The Parties, through their respective customs authorities and other border competent authorities shall review, where appropriate, international trade facilitation initiatives for the purpose of identifying areas in which additional joint actions would facilitate trade between the Parties and promote shared multilateral objectives.

Chapter 6. Safeguard Measures

Article 6.01. Bilateral Safeguard Measures

1. The application of bilateral safeguard measures shall be governed by provisions in this Chapter and supplemented by the provisions contained in Article XIX of GATT 1994, the Agreement on Safeguards and each Party's respective legislation.

2. During the transition period, each Party may apply a safeguard measure if, as a result of the reduction or elimination of a custom duty pursuant to this Agreement, a good originating in the territory 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 the like or directly competitive good.

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

(a) suspend the future reduction of any customs duty on the product provided for under this Agreement; or

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

(i) the Most-favored-Nation (MFN) applied customs duty in effect at the time the action is taken; and

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

Article 6.02. Standards for a Safeguard Measures

1. Except with the consent of the Party against whose originating good the action is taken, a Party may apply a safeguard measure, including any extension thereof, for no longer than three years.

2. Subject to paragraph 1 a Party may extend the period of a safeguard measure beyond a period of two years if the investigating authority determines, in conformity with the procedures set out in Article 6.04, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting.

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

4. The Parties may only apply and extend the application of safeguard measures on the same good on two occasions during the transition period.

5. A safeguard measure may be applied on a second occasion, provided that at least a period equivalent to the half of that one during which the safeguard measure was applied for the first time has passed.

6. Except with the consent of the Party against whose originating good the action is taken, no Party may maintain a safeguard measure beyond the expiration of the transition period.

7. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

(a) apply the customs duty set out in the Party Schedule to Annex 3.03 (Customs Tariff Elimination Schedule) as if the safeguard measure had never been applied; or

(b) eliminate the customs duty in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.03 (Customs Tariff Elimination Schedule) from the customs duty applied before the action is taken.

Article 6.03. Provisional Measures

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that imports originated from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and on condition that this increase has been the cause of serious injury, or threat thereof. The duration of such a provisional measure shall not exceed 120 days.

2. The period during which a provisional safeguard measure has been applied shall be counted for purposes of determining the duration of the period during which the final safeguard measure shall be applied pursuant to Article 6.02.

3. Provisional measures that do not become final shall be excluded from the limitation provided in Article 6.02.

Article 6.04. Administration of Safeguard Proceeding

1. Each Party shall ensure consistent and impartial application of its laws, regulations, decisions and rulings governing all safeguard procedures.

2. Each Party shall entrust the procedures for applying safeguard measures, the determination of serious injury, or threat thereof, to the competent investigating authority as defined in Annex 6.04, subject to review by judicial or administrative authorities, to the extent provided by domestic legislation. Negative determinations on the existence of serious injury, or threat thereof, may not be modified by the investigating authority unless such change is required by the respective judicial or administrative bodies. The investigating authority empowered under domestic legislation to conduct such procedures shall be provided with all means necessary to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for applying safeguard measures, in accordance with the requirements set forth in this Chapter and the provisions of the Agreement on Safeguards.

Article 6.05. Notification and Consultations

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

(a) initiating a safeguard investigation under this Chapter;

(b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 6.01; and

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

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

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

4. Any safeguard measure shall enter into force no later than one year from the date on which the investigation is initiated.

Article 6.06. Compensation

1. The Party applying a safeguard measure described in this Article shall after consultations with the Party against whose product the measure is applied, provide a mutually agreed compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party shall provide an opportunity for such consultations no later than 30 days, or a period otherwise mutually agreed, after the application of the safeguard measure.

2. If the consultations of paragraph 1 do not result in an agreement on the compensation within 30 days, or a period otherwise mutually agreed, the Party against whose originating good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

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

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

(a) the termination of the safeguard measure, or

(b) the date on which the customs duty returns to the rate of duty set out in the Party Schedule to Annex 3.03 (Customs Tariff Elimination Schedule).

Article 6.07. Global Safeguard Measures

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

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, except that a Party taking such an action may exclude imports of an originating good of the other Party covered by this Agreement if that Party accounts for not more than seven percent of total imports of the good concerned.

3. No Party may apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure; and

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

Article 6.08. Dispute Settlement on Safeguard Measures

Neither Party may request the establishment of an arbitral group pursuant to Article 22.07 (Request for Establishment of an Arbitration Group), before the other Party has imposed a safeguard measure.

Article 6.09. Definitions

For purposes of this Chapter:

Agreement on Safeguards means the WTO Agreement on Safeguards;

causality relation means "causality relation" as defined in the Agreement on Safeguards;

critical circumstances means circumstances where the delay of the application of safeguard measures could cause damage

which would be difficult to repair;

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

investigating authority means the competent "investigating authority" as defined in Annex 6.04;

safeguard measure means a measure described in Article 6.01. (1)

serious injury means "serious injury" as defined in the Agreement on Safeguards (a significant overall impairment in the position of a domestic industry);

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

threat of serious injury means "threat of serious injury" as defined in the Agreement on Safeguards (serious injury that on the basis of facts and not merely on allegation, conjecture, or remote possibilities, is clearly imminent); and

transition period means the tariff elimination period for the good set out in the Party's Schedule.

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

Chapter 7. Unfair Trade Practices

Anti-dumping and Countervailing Duty Matters

Article 7.01. Anti-dumping and Countervailing Duties

Except as provided in this Chapter, an antidumping measure or countervailing duty imposed by a Party on the goods imported from territory of the other Party shall be subject to Article VI of the GATT 1994, AD Agreement and the SCM Agreement, as appropriate.

Article 7.02. Consultations

Without prejudice to the right of any Party, a Party may invite the other Party for consultations, prior to initiating an antidumping or countervailing investigation under this Chapter, with the aim of clarifying the facts of the situation and to arrive at a mutually agreed solution.

Article 7.03. Standing of Domestic Industry

An antidumping or countervailing investigation shall not be initiated between the Parties unless the authorities have determined that the application has been made by or on behalf of the domestic industry whose collective output constitutes more than 50 percent of the total production of the like good produced by the domestic industry.

Article 7.04. Maximum Period for Completing on Investigation

An antidumping or countervailing investigation initiated by a Party against the products imported from the territory of the other Party shall be concluded within one year and, in special circumstances, this period may be extended to no more than 15 months, after its initiation.

Article 7.05. Duration of the Measures

Any definitive antidumping or countervailing duty imposed by a Party on a good imported from territory of the other Party shall be terminated on a date not later than four years from its imposition, notwithstanding the right to review in accordance with the WTO Agreement included in Article 7.01.

Article 7.06. Modifications

The Parties agree that negotiations for modifications of this Chapter will be initiated if a Party deems necessary.

Part Three. Technical Barriers to Trade

Chapter 8. Sanitary and Phytosanitary Measures

Article 8.01. Objectives

The objectives of this Chapter are to protect human, animal, or plant life or health in the Partiesâ territories, enhance the implementation of the SPS Agreement, and establish a Committee for addressing and resolving issues on sanitary and phytosanitary matters.

Article 8.02. General Provisions

1. The Parties reaffirm the provisions under the SPS Agreement.

2. Those that are legally responsible for ensuring compliance with sanitary and phytosanitary requirements provided in this Chapter are deemed as the competent authorities.

3. Based on the SPS Agreement, the Parties establish this framework of rules and disciplines to guide the development, adoption and compliance with sanitary and phytosanitary measures.

4. The Parties, shall facilitate trade through mutual cooperation to prevent the introduction or spread of pests and diseases, and improve plant health, animal health, and food safety.

Article 8.03. International Standards and Harmonization

With the aim to harmonize sanitary and phytosanitary measures, the Parties shall follow the principles as described below:

(a) each Party shall use international standards, guidelines or recommendations as reference guideline for its sanitary and phytosanitary measures;

(b) each Party may adopt, implement, establish or maintain a sanitary or phytosanitary measure with a level of protection different from or stricter than that of international standards, guidelines or recommendations, provided that there is scientific justification for the measure;

(c) with the aim of reaching a higher degree of harmonization, each Party shall follow the guidelines of the SPS Agreement, the IPPC for plant health, the OIE for animal health and the Codex on food safety and tolerance limits; and

(d) the Parties shall establish harmonized systems for the procedures of control, inspection and approval of the sanitary and phytosanitary measures for animals, plants, their products and by-products as well as food safety.

Article 8.04. Equivalence

For the purpose of applying sanitary and phytosanitary measures in the territories of the Parties, the Parties shall accept as equivalent the sanitary and phytosanitary measures of the other Party in accordance with the following principles:

(a) a Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent, even if these measures differ from its own in the same product, if the other Party objectively demonstrates to the Party that its measures, based on scientific information and risk assessment, achieve the Party's appropriate level of sanitary or phytosanitary protection. At the request of a Party, the other Party shall grant reasonable access for information related to inspection, testing and other relevant procedures; and

(b) the Parties shall facilitate access to their territories for purposes of inspection, testing, and other relevant procedures in order to establish equivalence between their sanitary and phytosanitary measures.

Article 8.05. Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

In accordance with the guidelines developed by relevant international organizations recognized by the WTO:

(a) the Parties shall ensure that their sanitary or phytosanitary measures are, based on an assessment, as appropriate to the circumstances, of the existing risks to human (food safety), animal or plant life or health protection, taking into account the

guidelines and risk assessment techniques developed by the relevant international organizations;

(b) the Parties shall facilitate the necessary conditions for the evaluation of their sanitary or phytosanitary services, by using the procedures in force, for the assessment of controls, inspections and application of sanitary or phytosanitary measures and programs, taking into account the guidelines and recommendations of the relevant international organizations;

(c) in assessing the risk that may exist in a commodity and establishing the appropriate level of protection, the Parties shall take into account the following factors:

(i) available technical and scientific information;

(ii) existence of pests or diseases, and recognition of pest or disease-free areas and areas of low pest or disease prevalence;

(iii) epidemiology of pests or diseases;

(iv) analysis of critical control points in sanitary (food safety) and phytosanitary aspects;

(v) physical, chemical and biological hazards in foods;

(vi) relevant ecological and environmental conditions;

(vii) production methods and processes, and the inspection, sampling and testing methods;

(viii) structure and organization of sanitary or phytosanitary services;

(ix) protection procedures, epidemiological surveillance, diagnosis and treatment to ensure food safety;

(x) loss of production or sales in the event of entry, establishment, or spread of a pest or disease;

(xi) applicable quarantine measures and treatments that shall satisfy the importing Party on risk mitigation; and

(xii) the cost of control or eradication of pests or diseases in the territory of the importing Party, and the cost-effectiveness of alternative approaches to reduce risks;

(d) when establishing the appropriate level of protection, the Parties shall avoid arbitrary or unjustifiable distinctions, if such distinctions result in discrimination or disguised restriction on trade;

(e) when a Party determines that relevant scientific evidence is insufficient for a risk assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available information, including information from the relevant international organizations described in this Chapter. In such circumstances, the Parties shall seek to obtain the additional information necessary for a more objective risk assessment and review the sanitary or phytosanitary measure accordingly within a reasonable period of time. For this purpose, the following procedures shall be applied:

(i) the importing Party provisionally applying the sanitary or phytosanitary measure shall, within 30 days of adopting the provisional measure, request the technical information necessary to complete a risk assessment from the other Party, which shall provide the required information. In case the information is not provided, the provisional measure shall be maintained, and if the information is not requested within the established period, the provisional measure shall be withdrawn;

(ii) if the importing Party has requested the information, it shall be a period of 60 days from the date of provision of such information to revise, withdraw or maintain the provisional measure as definitive. If necessary, the Party may extend the period;

(iii) the importing Party may request clarification of the information provided by the exporting Party;

(iv) the importing Party shall allow the exporting Party to provide its comments and shall take these into account in the conclusion of the risk assessment; and

(v) the adoption or amendment of a provisional sanitary or phytosanitary measure shall be immediately notified to the other Party through the notification authorities established under the SPS Agreement;

(f) where the risk assessment results in non-acceptance of an import, the scientific basis for the decision shall be notified in writing; and

(g) when a Party has reasons to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Party is restricting, or has the potential to restrict its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist,

an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Party maintaining the measure within 60 days from the date on which its competent authority receives the inquiry.

Article 8.06. Recognition of Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall recognize, based on international standards, guidelines or recommendations, the pest- or disease-free areas and areas of low pest or disease prevalence. They shall take into account such factors as geographical situation, ecosystems, epidemiological surveillance, and the effectiveness of sanitary and phytosanitary controls in the area.

2. The Party declaring that an area within its territory is free of a specific pest or disease shall demonstrate such a condition objectively to the importing Party, and give assurances that the area shall remain free of that pest or disease on the basis of protection measures adopted by the authorities responsible for sanitary and phytosanitary services.

3. The Party interested in obtaining recognition of a pest- or disease-free area shall request such recognition and provide the relevant scientific and technical information to the other Party.

4. The Party from which recognition is requested, may carry out inspection, testing and other relevant procedures. In case of non-acceptance of the request, it shall provide the technical reasons for its decision in writing.

5. The Parties may initiate consultation in order to reach agreement on specific requirements for recognition of pest-or disease-free areas or areas of low pest or disease prevalence. In view of lack of international standards for the recognition of areas of low pest or disease prevalence, it is agreed by both Parties that the recognition of such areas shall be pending until the establishment of the international standards.

Article 8.07. Control, Inspection and Approval Procedures

1. The Parties shall, in accordance with this Chapter, apply the provisions in Annex C of the SPS Agreement, as regards control, inspection or approval procedures, including national systems for approving the use of additives or for establishing levels of tolerance for contaminants in foods, beverages or feedstuffs.

2. When the competent authority of the exporting Party files a first request to the competent authority of the importing Party for the inspection of a productive unit or productive processes in its territory, the competent authority of the importing Party, after full review and assessment of the required documents and data, shall conduct such an inspection within a period not to exceed 100 days. This period may be extended by mutual agreement between the Parties, when such extension is justifiable, for example, due to a product's life cycle. Once the inspection is carried out, the importing Party shall issue a decision based on the inspection results and notify the exporting Party within 90 days from the date on which the inspection is completed.

Article 8.08. Transparency

1. Each Party, in recommending adoption or amendment of a sanitary or phytosanitary measure of general application, shall notify the following:

(a) the adoption of and amendment of measures. Furthermore, it shall facilitate relevant information in accordance with provisions in Annex B of the SPS Agreement and implement the pertinent adaptations;

(b) changes or amendments of sanitary or phytosanitary measures that have a significant effect on trade between the Parties, within 60 days prior to the effective date of the new provision, to allow for comments from the other Party. The 60 day period shall not apply to emergency situations, as established in Annex B of the SPS Agreement;

(c) changes occurring in the status of animal health, such as the occurrence of exotic diseases, and those on list in the Animal Health Code of the OIE, within 24 hours from the time the disease is confirmed;

(d) changes occurring in the status of phytosanitary, such as the occurrence of quarantine pests and diseases or spread of quarantine pests and diseases under official control, within 72 hours following their verification;

(e) disease outbreaks which are scientifically shown to be caused by the consumption of imported food and food products, natural or processed; and

(f) the causes or reasons for rejecting a commodity of the exporting Party.

2. The Parties shall designate notification authorities and enquiry points established under the SPS Agreement as a communication channel. In case urgent measures are adopted, the Parties shall immediately notify the other Party in writing, briefly indicating the objective and reason of the measure as well as the nature of the problem.

3. Each Party shall respond to reasonable requests for information from the other Party and provide the relevant documentation in accordance with the principles established in paragraph 3 of Annex B in the SPS Agreement.

Article 8.09. Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish the Committee on Sanitary and Phytosanitary Measures, as set out in Annex 8.09

2. In a period not to exceed 30 days after the entry into force of this Agreement the Parties, through an exchange of notes, shall identify their representatives to the Committee.

3. Each Party shall ensure that the Committee is made up of representatives with an adequate level of responsibility for the development, implementation and enforcement of sanitary and phytosanitary measures.

4. The Committee shall hear matter relating to this Chapter and shall carry out the following functions:

(a) Promoting the means necessary for the training and specialization of technical staffs;

(b) Promoting the active participation of the Parties in international bodies; and

(c) Creating and updating a database of specialist qualified in the fields of food safety, plant and animal health.

5. The Committee may establish ad hoc work groups.

6. Issues related to the development or application of sanitary or phytosanitary measures that affect or may affect trade between the Parties shall be consulted between them.

7. The Committee shall meet as mutually agreed.

Article 8.10. Technical Cooperation

Each Party, upon request from the other Party, may cooperate in research, technology, information exchange, technical assistance and other sanitary and phytosanitary related matters under mutually agreed terms and conditions to strengthen the sanitary and phytosanitary measures and activities related to the other Party.

Article 8.11. Definitions

For purposes of this Chapter, the Parties shall apply the definitions and terms set out in:

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

OIE means the World Organisation for Animal Health;

IPPC means the International Plant Protection Convention; and

CODEX means the Codex Alimentarius Commission,

such definitions and terms are incorporated to and form part of this Agreement.

Chapter 9. Technical Barrier to Trade

Article 9.01. General Provisions

The Parties affirm the rights and obligations under the TBT Agreement and shall in addition apply the provisions contained in this Chapter.

Article 9.02. Scope and Coverage

1. This Chapter applies to standardization measures and authorization and metrology procedures, as well as relevant measures that may, directly or indirectly, affect trade between the Parties.

2. The provisions in this Chapter shall not apply to sanitary and phytosanitary measures.

Article 9.03. Basic Rights and Obligations

1. Each Party shall prepare, adopt, apply and maintain:

(a) standardization measures and authorization and metrology procedures in accordance with the provisions contained in this Chapter; and

(b) technical regulations and conformity assessment procedures that allow the Party to ensure achievement of its legitimate objectives.

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

Article 9.04. Risk Assessment

1. In pursuing its legitimate objectives, each Party conducting a risk assessment shall take into account:

(a) the risk assessment conducted by international standardizing or metrology bodies;

(b) available scientific evidence or technical information;

(c) related processing technology; or

(d) intended end uses of goods.

2. When a Party establishes a level of protection that it considers appropriate and conducts a risk assessment, it should avoid arbitrary or unjustifiable distinctions between similar goods in the level of protection it considers appropriate, whenever said distinctions:

(a) result in arbitrary or unjustifiable discrimination against goods from the other Party;

(b) constitute a disguised restriction on trade between the Parties; or

(c) discriminate between similar goods for the same use under the same conditions that pose the same level of risk and provide similar benefits.

3. A Party shall, upon request from the other Party, provide documentation that is relevant to its risk assessment processes, as well as the factors that influenced the assessment, and a definition of the levels of protection applied in accordance with Article 9.03.

Article 9.05. Compatibility and Equivalence

1. Without prejudice to the rights of any Party under this Chapter, and taking into account international standardization and metrology activities, the Parties shall, to the greatest extent practicable, make compatible their respective standardization and metrology measures, without thereby reducing the level of safety or protection of human, animal and plant life or health, the environment or consumers.

2. A Party shall accept as equivalent to its own the technical regulations adopted by the other Party, whenever in collaboration with the other Party, the importing Party determines that the technical regulations of the exporting Party adequately fulfill the legitimate objectives of the importing Party.

3. Upon request, the importing Party shall provide to the exporting Party, in writing, its reasons for not accepting a technical regulation as equivalent under paragraph 2.

Article 9.06. Trade Facilitation

1. The Parties shall intensify their joint work in the field of standardization and metrology measures, with a view toward facilitating trade between the Parties. In particular, the Parties shall endeavor to identify trade facilitation initiatives related

to standardization and metrology measures suited to specific matters or sectors. These initiatives may include cooperation on standardization and metrology-related matters, such as convergence, alignment with international standards and the use of accreditation to certify conformity assessment bodies.

2. A Party shall, upon request by the other Party, give positive consideration to any proposal directed at a specific sector that the Party submits to promote increased cooperation under this Chapter.

Article 9.07. Conformity Assessment

1. A Party shall prepare, adopt and apply conformity assessment procedures so as to grants access to similar goods originating in the territory of the other Party under conditions no less favorable than those accorded to similar goods of national origin or originating in a non-Party country, in a comparable situation.

2. As regards its conformity assessment procedures, each Party is subject to the following:

(a) initiate and complete the procedure as expeditiously as possible in a non-discriminatory manner;

(b) publish the normal processing period for each such procedure or communicate such information to the applicant;

(c) ensure that the competent body or authority, on receipt of an application, promptly examines the completeness of the documentation and transmits to the applicant, as soon as possible, the results of the assessment procedure in a precise and complete manner, so that the applicant may take any necessary corrective action; where the application is deficient, proceeds as far as practicable with the procedure when the applicant so requests; and informs the applicant, upon request, of the status of the application and the reasons for any delay;

(d) limit the information the applicant is required to supply to the information necessary to conduct the procedure and to determine appropriate fees;

(e) ensure that the confidentiality of the information regarding goods from the other Party, resulting from these procedures or that were made available in compliance with this Article, be respected in the same way as its own goods are respected by that Party, thus protecting the applicant's legitimate trade interests;

(f) ensure that any fee imposed for conducting the procedure be equitable in comparison to any such fee imposed by the other Party for authorization procedures of similar goods, taking into account only communication, transportation and other costs derived from the applicant's facilities and authorization body being located in different premises; and

(g) ensure that a procedure exists to examine claims relative to the implementation of a conformity assessment procedure and that corrective measures are adopted when the claim is justified.

3. For the purpose of advancing in trade facilitation, a Party shall favorably consider a request by the other Party to enter into negotiations for the conclusion of mutual recognition agreements regarding the results of each other's conformity assessment procedures.

4. To the extent possible, a Party shall accept the results of conformity assessment procedures that are undertaken in the territory of the other Party, provided that such procedures are reliable enough, equivalent to the reliability of their own procedures, and that the good complies with the technical regulation or applicable standard adopted or maintained in the territory of said Party.

5. Prior to accepting the results of a conformity assessment procedure in accordance with provisions contained in paragraph 4, and for the purpose of strengthening the sustained reliability of the results of the conformity assessment undertaken by each Party, the Parties may consult on matters such as the technical capacity of the conformity assessment bodies in question, including the verified compliance regarding relevant international standards through such means as accreditation.

6. In recognizing that this will be of mutual benefit to the Parties involved, a Party shall accredit, approve or recognize the conformity assessment bodies in the territory of the other Party, in conditions that are not less favorable than those granted to the conformity assessment bodies in its territory.

7. For purposes of conformity assessment procedures, the Parties may use the technical infrastructure and capacity of accredited bodies established in their respective territory.

8. When a Party rejects the request of the other Party to enter into negotiations or conclude an agreement that facilitates recognition in its territory of the results of conformity assessment procedures implemented by bodies located in the territory of the other Party, it shall, at the request of that other Party, explain the reasons for its decision.

Article 9.08. Authorization Procedures

1. A Party shall prepare, adopt and apply authorization procedures in such a manner that it provides access to goods from the territory of the other Party under conditions that are not less favorable than those granted to like goods of national origin and to like goods originating in any other country.

2. Each Party shall, with respect to its authorization procedures:

(a) initiate and complete the procedure as expeditiously as possible in a non-discriminatory manner;

(b) publish the normal processing period for each such procedure or communicate such information to the applicant;

(c) ensure that the competent body or authority, on receipt of an application, promptly examines the completeness of the documentation and transmits to the applicant, as soon as possible, the results of the authorization procedure in a precise and complete manner, so that the applicant may take any necessary corrective action; where the application is deficient, proceeds as far as practicable with the procedure when the applicant so requests; and informs the applicant, upon request, of the status of the application and the reasons for any delay;

(d) limit the information the applicant is required to supply to the information necessary to conduct the procedure and to determine appropriate fees;

(e) ensure that the confidentiality of the information regarding goods from the other Party, resulting from these procedures or that were made available in compliance with this Article, be respected in the same way as its own goods are respected by that Party, thus protecting the applicant's legitimate trade interests;

(f) ensure that any fee imposed for conducting the procedure be equitable in comparison to any such fee imposed by the other Party for authorization procedures of similar goods, taking into account only communication, transportation and other costs derived from the applicant's facilities and authorization body being located in different premises; and

(g) ensure that a procedure exists to examine claims relative to the implementation of an authorization procedure and that corrective measures are adopted when the claim is justified.

Article 9.09. Metrology

Each Party shall ensure, to the extent possible, the documented traceability of its standards and the calibration of its measuring instruments, in accordance with the recommendations of the Bureau International de Poids et Measures (BIPM) and the International Organization of Legal Metrology (OIML), thus complying with the requirements set forth in this Chapter.

Article 9.10. Notification

1. In cases where a relevant international standard does not exist or that the technical content of a proposed technical regulation or a conformity assessment procedure does not conform to the technical content of relevant international standards, and if said technical regulation may have a significant effect on trade between the Parties, each Party shall notify the proposed measure in writing to the other Party, at least 60 days before its adoption, in such a manner that it allows the interested Parties to formulate observations, discuss said observations on request, and take the comments and the results of the discussion into account.

2. Whenever a Party faces, or is threatened with facing, serious problems relating to safety, health, environmental protection or national security, that Party may omit prior notification of the project, but once it has been adopted, it must notify the other Party.

3. Notifications in paragraphs 1 and 2 shall be made in accordance with the established formats as established in the TBT Agreement.

4. Within 30 days following the entry into force of this Agreement, a Party shall notify the other Party regarding the body designated to make notifications in accordance with this Article.

5. A Party shall notify in writing the other Party of its standardization plans and programmes.

6. Whenever a Party administratively refuses a shipment, it shall promptly and in writing notify the technical justification for such refusal to the owner of the shipment.

7. Once the information required under paragraph 5 is completed the Party shall immediately transmit it to the Enquiry Point mentioned in Article 9.11 of the other Party.

Article 9.11. Enquiry Point

1 The Parties shall exchange information regarding the standardization measures and authorization and metrology procedures adopted by governmental and non-governmental bodies through their respective Enquiry Points established in accordance with Article 10. 1 of the TBT Agreement.

2. If an Enquiry Point requests copies of the documents referred to in paragraph 1 they shall be delivered without cost, excepting those documents that have its own price established. The interested persons from the other Party shall receive copies of the documents at the same price as the nationals from this Party, plus the actual cost of shipment.

Article 9.12. Committee on Standardization, Metrology and Authorization Procedures

1. The Parties hereby establish a Committee on Standardization, Metrology and Authorization Procedures as set out in Annex 9.12.

2. The Committee shall hear matters relative to this Chapter and perform the following functions:

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

(b) analyze and recommend avenues for solution to such standardization measures, metrology and authorization procedures that a Party considers a technical obstacle to trade;

(c) facilitate sector cooperation between governmental and non-governmental bodies for conformity assessment in the territories of the Parties;

(d) facilitate cooperation in the development and improvement of standardization and metrology measures, and propose technical assistance mechanisms in accordance with the provisions contained in Article 11 of the TBT Agreement;

(e) provide assistance in risk assessments undertaken by the Parties;

(f) collaborate in the development and strengthening of the Parties' standardization and metrology; and

(g) the committee shall meet as mutually agreed. 3. All Committee decisions shall be adopted by mutual agreement.

Article 9.13. Technical Cooperation

1. Each Party shall promote technical cooperation between its standardizing and metrology bodies by providing technical information or assistance to the extent of its possibilities and in mutually agreed-upon terms, for the purpose of contributing to compliance with this Chapter and in order to strengthen standardization and metrology activities, processes, systems and measures.

2. The Parties shall undertake joint efforts with the objective of negotiating technical cooperation from countries that are not Party to this Agreement.

3. The Parties shall endeavour to develop technical cooperation programs with the objective of achieving effective compliance with the obligations agreed upon in this Chapter, taking into account the various levels of development in the standards, accreditation procedures, certification, and metrology institutions of the other Party. For this purpose, the Parties agree to strengthen their respective authorities on the issues of standards, including metrology, and to carry out the following activities to bolster their respective processes and systems in this field:

(a) preparation, implementation and review of technical cooperation and institutional programs;

(b) promotion of bilateral exchange of institutional and regulatory information; and

(c) promotion of bilateral cooperation through the respective agencies in international and multilateral fora on standards, including metrology.

Article 9.14. Definitions

For purposes of this Chapter:

authorization procedures means any mandatory administrative procedures for registration or obtaining a permit, license or any other authorization, with the aim that a good may be produced, marketed or used for defined purposes or according to established conditions;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations;

international standard means a standard or guide or recommendation adopted by an international standardizing body and made available to the public;

international standardizing and metrology bodies means a standardizing or metrology body open to the participation of at least all WTO Members, including the International Organization for Standardization, the International Electrotechnical Commission, the Codex Alimentarius Commission, the International Organization of Legal Metrology and the International Commission on Radiation Units and Measurements or any other body designated by the Parties;

legitimate objectives means inter alia national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment;

risk assessment means assessment of the potentially negative effects on the legitimate objectives pursued that may create obstacles to trade;

standardization measures means technical regulations, standards and procedures for assessment of conformity;

standard means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods 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 labeling requirements as they apply to a good, process or production method;

TBT Agreement means the WTO Agreement on Technical Barriers to Trade; and

technical regulation means

(a) a document that lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, process or production method; and

(b) except as defined in paragraph (a), the Parties shall use the terms of the ISO/IEC Guide 2:1996 titled "Standardization and Related Activities- General Vocabulary."

Part Four. Investment, Services and Related Matters

Chapter 10. Investment

Section A. Investment

Article 10.01. Scope and Coverage

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

(a) Investors of the other Party;

(b) Covered Investments; and

(c) with respect to Articles 10.09 and 10.11, all investments in the territory of the Party.

2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party.

3. For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.02. Relation to other Chapters

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

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 12 (Financial Services).

Article 10.03. 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 10.04. Most-Favored-Nation Treatment

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

Article 10.05. Minimum Standard of Treatment (1)

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

(1) Article 10.5 shall be interpreted in accordance with Annex 10-B.

Article 10.06. Treatment In Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

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

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

the latter Party shall provide the investor restitution or compensation, which in either case shall be in accordance with customary international law and, with respect to compensation, shall be in accordance with Article 10.07.2 through 10.07.4.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.03 but for Article 10.13.5(b).

Article 10.07. Expropriation and Compensation (2)

1. No 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 (3);

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

(d) in accordance with due process of law and Article 10.05.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

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

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid - converted into the currency of payment at the market rate of exchange prevailing on the date of payment - shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 17 (Intellectual Property Rights).(4)

(2) Article 10.07 shall be interpreted in accordance with Annexes 10-B and 10-C.

(3) For greater certainty, this term refers to a customary international law concept.

(4) 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 10.08. 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;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 10.06.1 and 10.06.2 and Article 10.07; and

(f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

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

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

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

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.09. Performance Requirements

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any of the following requirements, or enforce any commitment or undertaking:

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

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

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

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

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory;

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement (5); or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws (6).

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(ii) necessary to protect human, animal, or plant life or health; or

(iii) related to the conservation of living or non-living exhaustible natural resources;

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement; and

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(5) 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.

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

Article 10.10. Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement

does not materially impair the ability of the investor to exercise control over its investment.

Article 10.11. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.12. Denial of Benefit

Subject to Articles 20.03 (Notification and Provision of Information) and 22.05 (Consultations), a Party may deny the benefits under this Chapter to an investor of the other Party that is an enterprise of such other Party and to the investment of this investor, if investors of a non Party are owners of or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.13. Non-Conforming Measures

1. Articles 10.03, 10.04, 10.09, and 10.10 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex |; 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 10.03, 10.04, 10.09, or 10.10.

2. Articles 10.03, 10.04, 10.09, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.03, 10.04, and 10.10 do not apply to:

(a) procurement; or

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

Article 10.14. Special Formalities and Information Requirements

1. Nothing in Article 10.03 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.03 and 10.04, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Section B. Investor-State Dispute Settlement

Article 10.15. Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation.

Article 10.16. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

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

(i) that the respondent has breached

(A) an obligation under Section A;

(B) an investment authorization;

(C) an investment agreement;

and

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

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

(A) an obligation under Section A;

(B) an investment authorization;

(C) an investment agreement;

and

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

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) under the ICC Arbitration Rules.

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

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(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 in Article 4 of the ICC Arbitration Rules is received by the respondent.

A claim asserted for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

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

(b) the claimant's written consent for the Secretary-General to appoint such arbitrator.

Article 10.17. Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

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

Article 10.18. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three (3) years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

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

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

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

4. No claim may be submitted to arbitration:

(a) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b6)(i)(B); or

(b) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C);

if the claimant (for claims brought under Article 10.16.1(a)) or the claimant or the enterprise (for claims brought under Article 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the

respondent, or to any other binding dispute settlement procedure, for adjudication or resolution.

Article 10.19. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

3. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.

3. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefore.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimantâs 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 4.

4. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 3 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 therefore, 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.

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

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

7. A tribunal established under this Section may request, or the disputing parties may petition to, in accordance with domestic legislation, national courts for imposing an interim measure of protection to preserve the rights of a disputing party, or to ensure that 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 request attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.

8. 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. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

9. If a separate multilateral agreement enters into force as between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force as between the Parties.

Article 10.21. Transparency of Arbitral Proceedings

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

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and Article 10.25;

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

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 23.02 (National Security) or Article 23.05 (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 public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) a disputing party shall, at the same time that it submits a document containing information claimed to be protected

information, submit a redacted version of the document that does not contain the information. Only this version shall be public in accordance with paragraph 1; and

(d) the tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

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

Article 10.22. Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1 (a)(i)(A) or Article 10.16.1(b6)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(6)(i)(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws; (7) and

(ii) such rules of international law as may be applicable.

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 21.01 (The Free Trade Commission) shall be binding on a tribunal established under this Section, and any decision or award issued by the tribunal must be consistent with that decision.

(7) 7 The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Article 10.23. Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 21.01 (The Free Trade Commission) to the tribunal within 60 days of delivery of the request.

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

Article 10.24. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.25. Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the

terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within thirty (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 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 any 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 a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(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. Atribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may

order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26. Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal is not authorized to award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. Adisputing party may not seek enforcement of a final award until: (a) inthe 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 ICC Arbitration Rules:

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 22.07 (Request for an Arbitral Group). 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 22.13 (Preliminary Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 8.

10. Aclaim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

Article 10.27. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-E.

Section C. Definitions

Article 10.28. Definitions

For purposes of this Chapter:

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

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

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

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

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

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

ICC means the International Chamber of Commerce;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceeding by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

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; (8) (9)

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (10) (11) and

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

investment agreement means a written agreement (12) that takes effect on or after the date of entry into force of this Agreement between a national authority (13) of a party and a covered investment or an investor of the other Party that grants the covered investment or investor rights:

(a) with respect to natural resources or other assets that a national authority controls; and

(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other tan the written agreement itself;

investment authorization (14) means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;

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 a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

national means a natural person who has the nationality of a Party according to Annex 2.01;

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

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, or the ICC;

tribunal means an arbitration tribunal established under Article 10.19 or 10.25; and UNCITRAL Arbitration Rules means the arbitration rules of the United Nations

Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

(8) 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.

(9) For purposes of this Agreement, claims to payment that are immediately due and result from the sale of goods or services are not investments.

(10) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(11) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(12) "written agreement" refers to an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(13) For purposes of this definition, "national authority" means an authority at the central level of government.

(14) For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

Annex 10-A. Public Debt

The rescheduling of the debts of a Party, or of such Party's institutions owned or controlled through ownership interests by such Party, and the rescheduling of any of such Party's debts owed to creditors in general are not subject to any provision of Section A other than Articles 10.03 and 10.04.

Annex 10-B. Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Articles 10.05, 10.06, and Annex 10-C results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.05, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-C. Expropriation

The Parties confirm their shared understanding that:

1. Article 10.07.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

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

3. Article 10.07.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 10.07.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Annex 10-D. Submission of a Claim to Arbitration

1. An investor of a Party may not submit to arbitration under Section B a claim that a Party has breached an obligation under Section A either:

(a) on its own behalf under Article 10.16.1(a), or

(b) on behalf of an enterprise of a Party that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of a Party.

2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of the other Party, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

3. Notwithstanding Article 10.18, an investor of a Party may not submit to arbitration under Section B a claim relating to an investment in sovereign debt instruments with a maturity of less than one year unless one year has elapsed from the date of the events giving rise to the claim.

Annex 10-E. Service of Documents on a Party under Section B

The Republic of Nicaragua

Notices and other documents in disputes under Section B shall be served on the Republic of Nicaragua by delivery to:

Dirección General de Comercio Exterior Ministerio de Fomento, Industria y Comercio (MIFIC) Managua, Nicaragua

The Republic of China (Taiwan)

Notices and other documents in disputes under Section B shall be served on the Republic of China (Taiwan) by delivery to:

Department of Investment Services Ministry of Economy Affairs Taipei, the Republic of China (Taiwan)

or their successor.

Chapter 11. Cross-Border Trade In Services

Article 11.01. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale, and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

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

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

(a) central or local governments and authorities; and

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

3. Articles 11.05, 11.08 and 11.09 also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.28 (Definitions) or a covered investment. (1)

4. This Chapter does not apply to:

(a) financial services, as defined in Article 12.21 (Definitions), except as provided in paragraph 3;

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

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

(ii) specialty air services;

(c) government procurement; or

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

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

6. This Chapter does not apply to services supplied in the exercise of governmental authority. A "service supplied in the exercise of governmental authority" means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

(1) The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of the Chapter 10 (Investment).

Article 11.02. National Treatment

A Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like

circumstances, to its own service suppliers.

Article 11.03. Most-Favored-Nation Treatment

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

Article 11.04. Standard of Treatment

A Party shall accord to cross-border services and service providers of the other Party the better of the treatment required by Articles 11.02 and 11.03.

Article 11.05. Market Access

No Party may adopt or maintain in its territory measures that:

(a) impose limitations on:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

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

(iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;(2) or

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

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(2) This clause does not cover measures of a Party that limit inputs for the supply of services.

Article 11.06. Local Presence

No Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 11.07. Non-conforming Measures

1. Articles 11.02, 11.03, 11.05, and 11.06 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I; 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 11.02, 11.03, 11.05, and 11.06.

2. Articles 11.02, 11.03, 11.05 and, 11.06 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out in its Schedule to Annex II.

Article 11.08. Transparency In Developing and Applying Regulations (3)

Further to Chapter 20 (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter;

(b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including on request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(c) to the extent possible, each Party shall allow a reasonable time between publication of final regulations and their effective date.

(3) For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

Article 11.09. Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.07.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect for each Party, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties will coordinate on such negotiations as appropriate.

Article 11.10. Mutual Recognition

1. For the purposes of the fulfilment, 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, including the other Party and a non-Party. 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 the other Party or a non-Party, nothing in Article 11.03 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 any 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 that 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 that other Party's territory should be recognized.

4. No Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.10 (Professional Services) applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

Article 11.11. Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

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

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 11.12. Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other issues of mutual interest.

Article 11.13. Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 20.03 (Notification and Provision of Information) and 22.05 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party decides, according to its effective law that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party having no substantial business activities in the territory of the other Party.

Article 11.14. Procedures

The Parties shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule

(i) amendments of measure referred to in Article 11.07. (1) and (2); and

(ii) quantitative restrictions in accordance with Article 11.05;

(b) consultations on reservations or quantitative restrictions for further liberalization, if any.

Article 11.15. Definitions

For purposes of this Chapter:

cross-border trade in services or cross-border supply of services means the supply of a service:

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

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

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

but does not include the supply of a service in the territory of a Party by an investor of the other Party as defined in Article 10.28 (Definitions) or a covered investment;

enterprise means an "enterprise" as defined in Article 2.01 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the laws of that Party, and a branch located in the

territory of that Party and carrying out business activities there;

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 with a view to use in the production or supply of goods or services for commercial sale or resale;

professional services means services, the provision of which requires specialized postsecondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; (4)and

specialty air services means any non-transportation air services, such as aerial fire- fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(4) The Parties understand that for purposes of Articles 11.02 and 11.03, "service suppliers" has the same meaning as "services and service suppliers" in the GATS.

Chapter 12. Financial Services

Article 12.01. Scope and Coverage

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapters 10 (Investment) and 11 (Cross Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 10.07 (Expropriation and Compensation), 10.08 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.13 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter;

(b) Section B of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.07 (Expropriation and Compensation), 10.08 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirement), as incorporated into this Chapter;

(c) Article 11.11 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.05.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. The provisions of this Chapter shall prevail upon the provisions of the other Chapters, except in cases that an express remission is made to those Chapters.

Article 12.02. National Treatment

1. A 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. A Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 12.05.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.03. Most-Favored-Nation Treatment

1. A 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.

2. A Party may recognize prudential measures of the other Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with the other Party or a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.04. Market Access for Financial Institutions

No Party may 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; 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.

For 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.

Article 12.05. Cross-Border Trade

1. A 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 12.05.1.

2. A 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 that other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 12.06. New Financial Services (1)

A Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.04(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

(1) The Parties understand that nothing in Article 12.06 prevents a financial institution of a Party from applying to the other Party to request it to consider authorizing the supply of a financial service that is not supplied in the territory of any Party. The application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.06.

Article 12.07. Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.08. Senior Management and Boards of Directors

1. No Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.09. Non-Conforming Measures

1. Articles 12.02 through 12.05 and 12.08 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in its Schedule to Annex Ill, 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 12.02, 12.03, or 12.07.(2)

2. Annex 12.09.2 sets out certain specific commitments by each Party.

3. Annex 12.09.3 sets out, for purposes of transparency, supplementary information regarding certain aspects of financial services measures of a Party that the Party considers are not inconsistent with its obligations under this Chapter.

4. Articles 12.02 through 12.05 and 12.08 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex Ill.

5. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.03 (National Treatment), 10.04 (Most-Favored-Nation Treatment), 11.02 (National Treatment), 11.03 (Most-Favored-Nation Treatment, Services), or 11.05 (Market Access) does not apply shall be treated as a non-conforming measure to which Article 12.02 or, 12.03, or 12.04, as the case may be, does not apply, to the extent that the measure, sector, subsector, or activity set out in the Schedule is covered by this Chapter.

(2) For greater certainty, Article 12.05 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of this Agreement, with Article 12.05.

Article 12.10. Exceptions

1. Notwithstanding any other provision of this Chapter or Chapters 10 (Investment), 13 (Telecommunications), or 14 (Electronic Commerce), including specifically Article 13.17 (Relationship to Other Chapters) and Article 11.01.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (3) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters 10 (Investment), 13 (Telecommunications), or 14 (Electronic Commerce), including specifically Article 13.17 (Relationship to Other Chapters), and Article 11.01.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.09 (Performance Requirements) with respect to measures covered by Chapter 10 (Investment) or under Article 10.08 (Transfers) or 11.11 (Transfers and Payments).

3. Notwithstanding in the Article 10.08 (Transfers) and 11.11 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, ora disguised restriction on investment in financial institutions or cross-border trade in financial services.

(3) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

Article 12.11. Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 20.02.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.

3. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

Article 12.12. Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.02 and 12.03 by such self-regulatory organization.

Article 12.13. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14. Domestic Regulation

Except with respect to non-conforming measures listed in its Schedule to Annex III, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

Article 12.15. Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Article 12.16. Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 12.19.

All decisions of the Committee shall be taken by mutual agreement, unless the Committee otherwise decides.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17. Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.18. Dispute Settlement

1. Section A of Chapter 22 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to eight individuals who are willing and able to serve as financial services panellists. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to two individuals who are not nationals of any Party. The roster members shall be appointed by mutual agreement and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

3. Financial services roster members, as well as financial services panelists, shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

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

(c) be independent of, and not be affiliated with or take instructions from any Party; and

(d) comply with a code of conduct to be established by the Commission.

4. When a Party claims that a dispute arises under this Chapter, Article 22.10 (Arbitral Group Selection) shall apply, except that:

(a) where the disputing 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 disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 22.09 (Qualifications of Panelists); and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

5. Notwithstanding Article 22.16 (Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services

sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.19. Investment Disputes In Financial Services

1. Where an investor of a Party submits a claim under Section B of Chapter 10 (Investment) against the other Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.07 (Request for Establishment of an Arbitration Group). The panel shall be constituted in accordance with Article 12.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within ten days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

5. For purposes of this Article, tribunal means a tribunal established under Article 10.19 (Selection of Arbitrators).

Article 12.20. Consolidated Supervision

1. The Parties shall promote cooperation between their supervising and regulatory authorities.

2. The Parties recognize the necessity to strengthen the consolidated supervision of financial institutions and financial groups thru agreements regarding cooperation and exchange of information between their supervising and regulatory authorities.

Article 12.21. Definitions

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border

supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

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

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

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

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

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

financial institution of another 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, travellers checks, and bankers drafts;

(i) Guarantees and commitments;

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

(i) money market instruments (including checks, bills, and certificates of deposits);

(ii) foreign exchange;

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

(iv) exchange rate and interest rate instruments, including products such as swaps, 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 (0), 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 10.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.28 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 2.01 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

regulatory authorities means any governmental body that exercises a supervising authority over providers of financial services or financial institutions; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

Annex 12.05.1. Cross-Border Trade

Section A. The Republic of Nicaragua

Insurance and Insurance-Related Services

1. For The Republic of Nicaragua, Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

(a) insurance of risk relating to:

(i) maritime shipping, commercial aviation, and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) brokerage of insurance risks relating to subparagraphs (a)(i) and (a)(ii); and

(d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services, related with this numeral and provided solely to an insurance supplier.

2. For the Republic of Nicaragua, Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services and insurance related services listed in paragraph 1.

Banking and Other Financial Services (Excluding Insurance)

3. For the Republic of Nicaragua, Article 12.05.1 applies with respect to:

(a) the provision and transfer of financial information as described in subparagraph (0) of the definition of financial service; and

(b) financial data processing as described in subparagraph (0) of the definition of financial service. (4)

The financial services described in subparagraphs (a) and (b) are subject to prior authorization from the relevant regulator, as required.

(4) The Republic of Nicaragua's law regulating protection of information applies where the financial information or financial data processing referred to in subparagraphs (a) and (b) involves such protected information. Protected information includes, but is not limited to, information regulated under the concept of banking secrecy and personal information.

Section B. The Republic of China (Taiwan)

Insurance and Insurance-Related Services

1. For the Republic of China (Taiwan), Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

(a) insurance of risk relating to:

(i) maritime shipping, commercial aviation, and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) brokerage of insurance risks relating to subparagraphs (a)(i) and (a)(ii); and

(d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services, related with this numeral and provided solely to an insurance supplier.

2. For the Republic of China (Taiwan), Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services and insurance related services listed in paragraph 1.

Insurance, Banking and Other Financial Services

3. For the Republic of China (Taiwan), Article 12.05.1 applies with respect to the provision and transfer of financial information and financial data processing and related software.

Annex 12.09.2. Specific Commitments

Section A. The Republic of Nicaragua

Expedited Availability of Insurance

1. The Republic of Nicaragua should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

Insurance Branching

2. Notwithstanding the nonconforming measures of the Republic of Nicaragua in Annex Ill, Section B, referring to insurance market access, excluding any portion of those non-conforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, the Republic of Nicaragua shall allow the Republic of China (Taiwan) insurance suppliers to establish in its territory through branches. The Republic of Nicaragua may choose how to regulate branches, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk capital and their investments.

Section B. The Republic of China (Taiwan)

Expedited Availability of Insurance

1. It is understood that the Republic of China (Taiwan) requires prior product approvals for the introduction of a new insurance product.

2. The Republic of China (Taiwan) should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

Banking Services

3. Notwithstanding Annex III, at the entry into force of this Agreement, the Republic of China (Taiwan) establishes in the following paragraph further liberalization commitments.

4. The Republic of China (Taiwan) shall not require the Republic of Nicaragua's banks, in applying for approvals to establish branches, offshore banking branches and representative offices, to meet the requirements of bank rankings and prior business volume specified in the Regulations Governing Foreign Bank Branches and Representative Offices and the Implementation of Offshore Banking Act.

Cross-border Trade in Financial Services

5. In the event that the Republic of China (Taiwan) applies a better market access than the one applied in this Agreement in any cross-border trade in financial services to another country, this new access shall be granted to the Republic of Nicaragua in a period no greater than 60 days from the entry into force of this new market access level.

Annex 12.09.3. Additional Information Regarding Financial Services Measures

The Parties indicated below has provided the following descriptive and explanatory information regarding certain aspects of its financial services measures for purposes of transparency.

Section A. The Republic of Nicaragua

1. The Republic of Nicaragua reserves the right to deny an operating license to a financial institution or group (other than an insurance financial institution or group) in the event that the other Party has denied or cancelled an operating license to such financial institution or group.

2. To maintain a branch in the Republic of Nicaragua, a bank constituted and organized in a foreign country must:

(a) be legally authorized and allowed by its bylaws to operate in that foreign country and to establish branches in other foreign countries;

(b) prior to establishing such branch, present a certification issued by the supervising authority of the country in which the bank is constituted and organized, indicating that authority's concurrence that the bank may establish a branch in the Republic of Nicaragua; and

(c) assign the branch capital that meets minimum requirements; Such a branch must have its domicile in the Republic of Nicaragua.

3. To maintain a branch in the Republic of Nicaragua, a non-banking financial institution organized and constituted under the laws of a foreign country must:

(a) be legally authorized and allowed by its bylaws to operate in the country in which it is organized and constituted and to establish branches abroad;

(b) prior to establishing such branch, present a certification issued by the supervising authority of the country in which such institution is constituted and organized, indicating that authority's concurrence with the establishment of a branch in the Republic of Nicaragua by such institution;

(c) assign such branch capital meeting the minimum requirements; and (d) in the case of FONCITUR, the capital and all of the funds of the

FONCITUR must be invested in the Republic of Nicaragua, in projects registered with the Instituto NicaragGense de Turismo;

Such a branch must have its domicile in the Republic of Nicaragua.

4. For purposes of this paragraph and paragraph 3:

(a) non-banking financial institution means an institution that operates as a recipient of deposits from the public, as a stock

exchange or institution related to a stock exchange; as Almacenes Generales de Depósitos con caracter financiero; as leasing entities; and as FONCITURs; and

(b) FONCITUR means Fondo de Capital de Inversión Turistica.

5. A representative office of a foreign bank may place funds in the Republic of Nicaragua in the form of loans and investments, and act as information centers for their clients, but is prohibited from accepting deposits from the public in the Republic of Nicaragua.

Section B. The Republic of China (Taiwan)

Financial regulations are updated on the website of Financial Supervisory Commission (http://Awww.fscey.gov.tw).

Annex 12.16.1. Committee on Financial Services

The authorities of each Party responsible for financial services are:

(a) in the case of the Republic of Nicaragua, the Ministerio de Fomento, Industria y Comercio, the Superintendencia de Bancos y otras Instituciones Financieras, and the Ministerio de Hacienda y Crédito Publico, for banking and other financial services and for insurance; and

(b) in the case of the Republic of China (Taiwan), the Ministry of Economic Affairs and the Financial Supervisory Commission, for banking and other financial services and for insurance; or their successors.

Chapter 13. Telecommunications

Article 13.01. Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;

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

(c) other measures relating to public telecommunications networks or services; and

(d) measures adopted or maintained by a Party relating to the supply of information services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally;

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting persons operating private networks (1) from using their networks to supply public telecommunications networks or services to third parties.

For greater certainty, nothing in this Chapter shall be construed to prevent the Republic of Nicaragua from applying a Most-Favored Treatment to other Central American countries, in the Central American Integration Framework.

(1) According to the law of the Republic of Nicaragua, the private networks are those destined to services of strict Particular Interest. The Services of Particular Interest are those established by a natural or legal person to satisfy their own necessities of communication using authorized networks or their own facilities, within the national territory. The cross border private networks require to lease capabilities of a service operator properly authorized in the Nicaraguan territory to operate their own international long distance infrastructures. These services cannot be provided to third parties, they are provided by the telecommunications private networks, which shall not be interconnected to the public network, unless it is authorized by the Instituto Nicaraguense de Telecomunicaciones y Correos (TELCOR) or its succesor. The cross

border traffic directed through the pertinent infrastructure that comprises of a private network must be originated and be finished within the same private network.

Article 13.02. Access to and Use of Public Telecommunications Services

1. A Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;

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

(e) use operating protocols of their choice.

3. A Party shall ensure that enterprises of the other Party may use public Telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of the Parties.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of subscribers to public telecommunications services, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

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

(b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

Article 13.03. Obligations Relating to Suppliers of Public Telecommunications Services (2)

Interconnection

1. (a) A Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

(c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications services suppliers to file their interconnection contracts. (3)

Resale

2 Each Party shall endeavour to ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions. (4)

Dialing Parity

4. A Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of the other Party, and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

(2) Paragraphs 2 through 4 of this Article do not apply with respect to suppliers of commercial mobile services. Nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

(3) In the case of the Republic of Nicaragua the prior approval of interconnection contracts is required.

(4) Compliance with this paragraph, shall be subject to the economic feasibility of providing number portability, taking into account the market development level.

Article 13.04. Additional Obligations Relating to Major Suppliers of Public Telecommunications Services (5)

Treatment by Major Suppliers

1. A Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party treatment no less favorable than such major suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers regarding:

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

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

Competitive Safeguards

2. (a) Each Party shall maintain (6) appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

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

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

Resale

3. A Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates (7), to suppliers of public telecommunications services of the other Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services. (8)

Unbundling of Network Elements

4. (a) Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

(b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law and regulations.

Interconnection

5. (a) General Terms and Conditions

A Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

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

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

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

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

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

(b) Options for Interconnecting with Major Suppliers

A Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

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

(ii) the terms and conditions of an interconnection agreement in force or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Negotiations

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body or other relevant body.

(ii) Each Party shall make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory.

Provisioning and Pricing of Leased Circuits Services

6. (a) A Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services on terms, conditions, and at rates that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), a Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of the other Party at flat rate, cost-oriented prices.

Co-location

7. (a) Subject to subparagraphs (b) and (c), a Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory:

(i) provide an alternative solution, or

(ii) facilitate virtual co-location in its territory, on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.

(c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

Access to Rights-of-Way

8. A Party shall ensure that major suppliers in its territory afford access to their poles, ducts, conduits, and rights-of-way which are bulletined as network bottleneck facilities to suppliers of public telecommunications services of the other Party on terms, conditions, and at rates that are reasonable and non-discriminatory

(5) The Article 13.04 does not apply with respect to suppliers of commercial mobile services. This Article is without prejudice to any rights or obligations that a Party may have under the GATS, and nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

(6) For purposes of paragraph 2, "maintain" a measure includes the actual implementation of such measure, as appropriate.

(7) For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations satisfy the standard of reasonableness. Therefore, each Party shall establish their reasonability criteria according to the conditions of its own market.

(8) A Party may provide, that a reseller that obtains a public telecommunications service at wholesale rates, that is available at retail rates to only a limited category of subscribers, shall not offer this service to a different category of subscribers.

Article 13.05. Conditions for the Supply of Information Services

1. No Party may require an enterprise in its territory that it classifies (9) as a supplier of information services and that supplies such services over facilities that it does not own to:

(a) supply such services to the public generally;

(b) cost-justify its rates for such services;

(c) file a tariff for such services for approval;

(d) interconnect its networks with any particular customer for the supply of

such services; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

(9) For purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

Article 13.06. Independent Regulatory Bodies and Government-Owned Telecommunications Suppliers (10)

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. No Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of the other Party on the ground that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

(10) Each Party shall endeavor to ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

Article 13.07. Universal Service

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.08. Licenses and other Authorizations

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures it applies;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

Article 13.09. Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. For greater certainty, a Party's measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are per se inconsistent with Article 11.04 (Market Access), which is applied to Chapter 10 (Investment) through Article 11.01 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency allocation and management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

Article 13.10. Enforcement

Each Party shall provide its competent authority with the authority to establish and enforce the Partyâs measures relating to the obligations set out in Articles 13.02 through 13.05. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

Article 13.11. Resolution of Domestic Telecommunications Disputes

Further to Articles 20.04 (Administrative Proceedings) and 20.05 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

(a) (i) A Party shall ensure that enterprises of the other Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 13.02 through 13.05.

(ii) A Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

(b) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Judicial Review

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

Article 13.12. Transparency

Further to Articles 20.02 (Publication) and 20.03 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

(c) its measurees relating to public telecommunications services are made publicly available, including measures relating to:

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

(ii) procedures relating to judicial and other adjudicatory proceedings;

(iii) specifications of technical interfaces;

(iv) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;

(v) conditions for attaching terminal or other equipment to the public telecommunications network; and

(vi) notification, permit, registration, or licensing requirements, if any.

Article 13.13. Flexibility In the Choice of Technologies

No 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.

Article 13.14. Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 13.15. Standards-Related Measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications networks;

(b) prevent technical interference with, or degradation of, public telecommunications networks or services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction;

(e) ensure users' safety and access to public telecommunications networks or services; or

(f) ensure electromagnetic spectrum's efficiency.

2. A Party may require approval for the attachment to the public telecommunications network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. When the condition allows it, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

Article 13.16. Technical Cooperation and other Consultations

1. To encourage the development of interoperable telecommunications services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications networks and services.

Article 13.17. Relationship to other Chapters

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

Article 13.18. Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

commercial mobile services means public telecommunications services supplied through mobile wireless means;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation and approval as well as their combinations, including the procedures referred to in Annex 13.15;

cost-oriented (11) means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an "enterprise" as defined in Article 2.01 (Definitions of General Application), and includes a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly supplied by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

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

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

network termination point means the final demarcation of the public telecommunications network at the customer's premises;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to supply public telecommunications services;

public telecommunications networks means public telecommunications infrastructure which permits telecommunications between an among defined network termination points

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

standardization measures means the rules, technical regulations or procedures for conformity assessment;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications;

terminal equipment means any analog or digital device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point; and

user means an end-user or a supplier of public telecommunications services.

(11) The technical definitions on Telecommunications shall be evaluated under the recommendations of the International Union of Telecommunications.

Chapter 14. Electronic Commerce

Article 14.01. General

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

Article 14.02. Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapters 10 (Investment), 11 (Cross-Border Trade in Services), and 12 (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

Article 14.03. Digital Products

1. No Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. No Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:

(a) on the basis that (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or non-Party; or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory. (1)

4. No Party may accord less favorable treatment to digital products transmitted electronically:

(a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products transmitted electronically that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non-Party.

5. Paragraphs 3 and 4 do not apply to any non-conforming measure described in Articles 10.13 (Non-Conforming Measures), 11.07 (Non-Conforming Measures), or 12.09 (Non- Conforming Measures).

(1) For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

Article 14.04. Transparency

Each Party shall publish or otherwise make available to the public its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 14.05. Cooperation

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

(a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;

(b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;

(c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

(d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and

(e) actively participating in bilateral and multilateral fora to promote the development of electronic commerce.

Article 14.06. Definitions

For purposes of this Chapter:

carrier medium means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, and a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded; (2)

electronic means means employing computer processing; and

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.

(2) For greater certainty, digital products do not include digitized representations of financial instruments.

Chapter 15. Temporary Entry for Business Persons

Article 15.01. General Principles

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the necessity to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 15.02. General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 15.01 and, in particular, shall apply expeditiously those measures so as to avoid unduly delaying or impairing trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 15.03. Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provision of Annex 15.03 and 15.03(1).

2. A Party may refuse a temporary entry to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

4. An authorization of temporary entry under this Chapter, does not supersede the requirements demanded by the exercise of a profession or activity according to the specific rules in force in the territory of the Party authorizing the temporary entry.

Article 15.04. Provision of Information

Further to Article 20.02 (Publication), each Party shall: provide to the other Party such materials as will enable it to become acquainted with measures to be adopted relating to this Chapter.

Article 15.05. Dispute Settlement

1. A Party may not initiate proceedings under Article 22.05 (Consultations) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 15.02 unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative review regarding the particular matter.

2. The administrative review 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 six months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 15.06. Definitions

1. For purposes of this Chapter:

business activities means legitimate commercial activities undertaken and operated with the purpose of obtaining profits in the market, not including the possibility of obtaining employment, wages or remuneration temporal or permanent from a labour source in the territory of a Party;

business person means a national of a Party who is engaged in trade of goods, provision of services or conduct of investment activities, without the intention to seek employment;

labor certification means procedure applied by the competent administrative authority with the purpose of determining if a national of a Party who seeks a temporary entry into the territory of the other Party displaces national workers in the same domestic industry or noticeably harms labour conditions in it;

national means "national" as defined in Chapter 2 (General Definitions), but not including those permanent residents;

pattern of practice means a practice repeatedly followed by the immigration

authorities of one Party during the representative period immediately before the execution of the same; 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.

2. For purposes of Annex 15.03:

executive functions means functions assigned in an organization to 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, component or function; or

(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;

functions requiring specialized knowledge means functions that require special knowledge of goods, services, research, equipment, techniques, management of an organization or of its interests and their application in international markets, or an advanced level of knowledge or experience in the processes and procedures of the organization; and

management functions means functions assigned in an organization to a person who shall have the following basic responsibilities:

(a) managing the organization or an essential function within it;

(b) supervising and controlling the work of other professional employees, supervisors or administrators;

(c) having the authority to engage and dismiss or to recommend these actions, and to undertake other actions related to management of the personnel directly supervised by this person, and to perform senior functions within the organization hierarchy or functions related to his position; or

(d) performing discretionary actions related to the daily operation of the function over which this person has the authority.

Annex 5.03. Temporary Entry for Business Persons

Section A. Business Visitors

1. Each Party shall grant temporary entry and expedite document verification to a business person seeking to engage in a business activity set out in Appendix 15.03(A)(1), without other requirements than those established by the existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry, and evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall consider that a business person satisfies the requirements of paragraph 1(b) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting

temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of most of the profits remain outside such territory.

For purpose of this paragraph, a Party that authorizes temporary entry shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it should be conducted according to its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 15.03(A)(1), on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 15.03(A)(1).

4. No Party may: (a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider removing their visa or equivalent document requirement.

Section B. Traders and Investors

1. Each Party shall grant temporary entry and provide documentation verification to a business person, who in a capacity that is managerial, executive or requiring specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, and seeks to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital.

2. No Party may:

(a) as a condition for authorizing temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

Section C. Intra-corporate Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render management, executive or functions requiring specialized knowledge to that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with effective immigration measures applicable to temporary entry. A Party may require the person to have been employed continuously by the enterprise for one year immediately preceding the date of the application for admission.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to

obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

Annex 15.03(1). Special Provision Regarding Temporary Entry of Business Persons For the Republic of Nicaragua:

The business person who enters the Republic of Nicaragua under any of the categories of Annex 15.03 shall hold a temporary residency and may renew this for consecutive periods, as long as the conditions under which the residency was granted remain the same. Such persons may not request a permanent residency nor change their immigration status, unless they comply with the general provisions of the Ley de Migración, Law No. 153 of April 30, 1993, and Ley de Extranjeria, Law No. 154 of May 3, 1993.

For the Republic of China (Taiwan):

1. The business person should obtain a visitor or resident visa prior to entry. A visitor visa of which validity no longer than 1 year, multiple entry and 90 day duration of stay may be issued. The entry visa held by a business person, who engages in the performance of contract, such as subcontract, sale, or technical cooperation, shall be deemed as a work permit for the first fourteen days. The business person in possession of a resident visa may stay in the Republic of China (Taiwan) provided the work permit remains valid. The duration of stay may be extendable for consecutive periods as long as the conditions justifying it are maintained. Such a person may not require permanent residence unless satisfying the provisions of the Immigration Law.

2. If a business person is defined as a resident in the mainland China area by the Statute Governing the Relations Between the People of the Taiwan Area and the Mainland Area and its Regulations, the person must apply for entry permit according to the said Statute and Regulations.

Appendix 15.03(A)(1). Business Vistors

Research and Design

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise established in the territory of the other Party.

Cultivation, Manufacture and Production Purchasing

- Purchasing and production personnel at managerial level conducting commercial operation for an enterprise established in the territory of the other Party.

Marketing

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise established in the territory of the other Party.

- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts on goods or services for an enterprise established in the territory of the other Party but not delivering goods or providing services.

- Buyers purchasing for an enterprise established in the territory of the other Party.

After-sale Service

- Installation, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Consultants conducting business activities at the level of the provision of cross-border services.

- Management and supervisory personnel engaging in a commercial operation for an enterprise established in the territory of the other Party.

- Financial services personnel engaging in commercial operation for an enterprise established in the territory of the other Party.

- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Appendix 15.03(A)(3). Existing Immigration Measures

In the case of the Republic of Nicaragua:

- Ley de Nacionalidad, Law No.149, Published in the Official Gazette No. 124 on June 30, 1992;

- Ley de Migración. Law No.153, Published in the Official Gazette No. 80 on April 30, 1993;

- Ley de Extranjerfa. Ley No. 154, Published in the Official Gazette No 81 on May 3, 1993;

- Ley de Control de Trafico de Migrantes llegales. Law No.240, Published in the Official Gazette No.220 on November 20, 1996;

- Ley de Incentivos Migratorios, Law No.250, Published in the Official Gazette No. 52 don March 14, 1997;

- Decree-Law 15-94 Aranceles por Servicios de Migración y Extranjeria Published in the Official Gazette No 62 on April 6, 1994; and

- Decree N° 57-2005 Sobre la Aplicación para Visas para Nacionalidades Restringidas, Published in the Official Gazette No 172 on September 5, 2005.

In the case of the Republic of China (Taiwan):

The Immigration Law, promulgated No. 8800119740 on May 21, 1999;

The Statute Governing Issuance of Republic of China (Taiwan) Visas on Foreign Passports, promulgated on June 02, 1999 and the Regulations for Issuance of Republic of China (Taiwan) Visas on Foreign Passports, promulgated on May 31, 2000;

Employment Service Act, Promulgated on May 8, 1992, amended on May 16, 2003; and

Enforcement Rules of the Employment Service Act, amended by the Council of Labor Affairs on January 13, 2004.

Part Five. Competition Policy

Chapter 16. Competition Policy

Article 16.01. Objectives

1. The purposes of this Chapter are to endeavor that the benefits of trade liberalization are not undermined by anticompetitive activities and to promote cooperation and coordination between the competent authorities of the Parties.

2. The Parties recognize the importance of cooperation and coordination in enforcing compliance mechanisms, including notification, consultation and exchange of information related to the competition policies in the context of the norms established in the national legislation of each Party's competition laws and policies, provided that these do not contravene the legal obligations concerning confidentiality.

3. Furthermore, the Parties shall endeavor to establish mechanisms that facilitate and promote the development of a competition policy and ensure the implementation of free competition standards between and within the Parties, for the purpose of preventing the negative effects of anticompetitive practices in the free trade area.

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

Article 16.02. Free Competition Committee

The Free Competition Committee is hereby created and shall be made up of one member from each Party. The Committee's main function shall be to search for the most appropriate means to implement the provisions set forth in paragraphs 1, 2 and 3 of the previous article, as well as any other task assigned it by the Committee. This Committee will meet at least once a year.

Article 16.03. Monopolies

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits.

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopolized good and services, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good and services in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; and

(c) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affects the other Party, including through the discriminatory provision of the monopoly good and services, cross-subsidization or predatory conduct.

Article 16.04. State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods.

Article 16.5. Definitions

For purposes of this Chapter:

designate means to establish, designate or authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

state enterprise means an enterprise owned, or controlled through ownership interests, by a Party.

Part Six. Intellectual Property Rights

Chapter 17. Intellectual Property Rights

Section A. General Provisions

Article 17.01. General Provisions

The Parties agree that TRIPS Agreement, as well as the substantive provisions contained in the following intellectual property conventions shall apply to all issues arising from this Agreement:

(a) Article 1 through 11, the Paris Convention for the Protection of Industrial Property(1967);

(b) Article 2 through 19, and 21, the Berne Convention for the Protection of Literary and Artistic Works (1971);

(c) Article 1 through 15, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);

(d) Article 1 through 7, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;

(e) Article 2 through 14, the World Intellectual Property Organization (WIPO) Copyright Treaty (1996);

(f) Article 2 through 20, and 22 through 23, the WIPO Performances and Phonograms Treaty (1996); and

(g) Article 1 through 14, the International Convention for the Protection of New Varieties of Plants (UPOV), (Act 1978).

Section B. Protection of Intellectual Property Rights

Article 17.02. General Obligations

1. A Party shall, in its territory, grant nationals from the other Party, adequate and effective protection and shall comply with intellectual property rights, while ensuring that the measures intended to comply with said rights do not become obstacles to legitimate trade.

2. Each Party may, in its own legislation, implement broader protection as required in this Chapter, as long as such protection does not contravene the provisions of this Agreement.

3. The Parties may freely establish the most adequate method of implementing the provisions of this Chapter, within the framework of their own legal system and practice.

4. This Chapter does not give rise to obligations on the Parties regarding acts that occurred before the date of entry into force of this Agreement.

5. Nothing in this Chapter prevents a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set out in this Chapter, provided that such measures are consistent with the provisions in this Chapter.

Section C. Application

Article 17.03. Relation with other Agreements

1. The Parties assert their rights and obligations under the TRIPS Agreement.

2. Each Party asserts the rights and obligations under the multilateral agreements relating to intellectual property rights, in particular those concluded under the auspices of the WIPO and to which they are Parties.

3. The Parties confirm that if either of them that is not a party to one or more of the multilateral treaties listed in Article 17.01, it commits itself to put forth its best efforts to seek to join those treaties in due time.

Article 17.04. Applications

1. Intellectual property rights in this Chapter shall include each and every one of the rights in the area of patents (inventions, utility models and industrial designs), trade secrets or confidential information or undisclosed information, integrated

circuits, trademarks and other distinctive signs, geographical indications, new varieties of plants, and copyrights and related rights.

2. This Chapter also includes the protection of traditional knowledge and folklore as well as access to genetic resources.

3. Each Party shall maintain or establish effective administrative, civil and criminal procedures in its legislation, with the aim of achieving adequate protection of intellectual property rights. Such procedures shall take into account the due process concerning the relationship between the plaintiff and the defendant.

Article 17.05. Transparency

Each Party shall ensure that all laws, regulations and procedures regarding the protection of intellectual property rights shall be in writing and published. If such publication is not practicable, it shall be made available to the public on the Internet, so as to enable governments and right holders to obtain prima facie information, and to ensure the transparency of the intellectual property rights protection system.

Section D. Intellectual Property Committee

Article 17.06. Intellectual Property Committee

1. The Parties hereby establish an Intellectual Property Committee, as set out in Annex 17.06, to review all issues related to intellectual property that arise from this Agreement. This Committee is also authorized to review and follow the progress of issues that concerned by both parties under the framework of WIPO and WTO.

2. Ina period of time not exceeding 18 months upon the date of entry into force of this Agreement, the Committee shall establish a technical cooperation system regarding matters related to intellectual property.

3. The Intellectual Property Committee may establish a group of experts comprising of professionals from the Intellectual Property Offices of each Party, when it is necessary.

4. The Committee and/or the Group of Experts may meet, in principle, every two years or by request of the parties. The venue for the meeting shall rotate between the Parties, subject to mutual agreement.

Section E. Trademarks, Geographical Indications, and Domain Names

Article 17.07. Trademarks

1. Each Party shall provide that a trademark may consist of any sign or combination of signs that is capable of distinguishing the goods or services of one undertaking from those of other undertakings, including personal names, designs, letters, numerals colors figurative elements, sound, or the shape of goods or of their packaging. In addition, each Party may provide that scent marks are eligible for protection. Trademarks shall include service marks, collective marks, certification marks.

2. Insofar as possible, each Party shall provide a system for the electronic application, processing, registration and maintenance of trademarks, and shall work to establish, insofar as possible, a publicly available electronic on-line database of trademark applications and registrations.

Article 17.08. Well-known Marks

Each Party shall apply Article 6 bis of the Paris Convention, to goods and services, mutatis mutandis. In order to determine if a trademark is well-known, the Parties shall take into account the knowledge of the trademark among the relevant sector of the public, including the knowledge obtained.

Article 17.09. "Telle Quelle" Marks

Each Party shall apply Article 6 quinquies of the Paris Convention concerning the protection of trademarks, in accordance with the "telle quelle" or "as is" clause.

Article 17.10. Geographical Indications

For the purposes of this Chapter, geographical indications are indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where the quality, reputation or any other characteristic of the good can be essentially attributed to its geographical origin. Any sign or combination of signs, in any form, is eligible to be a geographical indication.

Article 17.11. Procedures with Respect to Geographical Indications

The Parties shall provide the legal means to identify and protect the geographical indications that comply with the criteria of Article 17.10, in accordance with the legislation of each Party.

Article 17.12. Domain Names on the Internet

Each Party shall require that the management of its country-code top-level domain (ccTLD) provides an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), in order to address the problem of trademark cyber-piracy.

Section F. Patents, New Varieties of Plants and Regulated Products

Article 17.13. Patents

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, as long as the invention is new, involves an inventive step and is capable of industrial application.

2. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, on condition that such exceptions do not conflict with the normal exploitation of a patent in an unreasonably manner, nor prejudice the legitimate interests of the patent owner, taking into account of the legitimate interests of third parties.

Article 17.14. New Varieties of Plants

1. Each Party shall recognize and ensure the rights of plant breeders through a special registry system as provided in the legislations in the territory of each Party. The rights of plant breeders shall be protected as an intellectual property right which can be marketable and transferable.

2. The Parties recognize that the UPOV contains exception to the rights of plant breeders, including acts undertaken by farmers in the private sphere and with non-commercial objectives. Further, the Parties recognize that UPOV establishes restrictions on the exercise of the rights of plant breeders for reasons of public interest, as long as the Parties take all the necessary measures to ensure that the plant breeder receives equitable remuneration. The Parties also recognize that each Party may make use of the exceptions and restrictions contained in UPOV, and that there is no contradiction between the UPOV and the capacity of a Party to protect and conserve its genetic resources.

Article 17.15. Regulated Products

A Party shall observe and respect the national legislations and international treaties adopted by the other Party relating to the manufacturing, marketing and distribution of pharmaceutical and agrochemical goods.

Section G. Copyright and Related Rights

Article 17.16. Obligations Pertaining to Copyright and Related Rights

1. Copyrights include those of a moral and property in nature that confer upon the author the exclusive right to exploit a work, under the legislation of each Party.

2. Each Party shall provide that the authors, artists, singers or performers, producers of phonograms have the right to authorize or prohibit the reproduction of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

3. Each Party shall grant authors, artists, singers or performers, producers of phonograms the right to authorize the original or copies of their works, interpretations or performances and their phonograms be made available to the public by means of sale or any other means of transferring property.

Section H. Collective Rights, Protection of Folklore and Genetic Resources

Article 17.17. Protection of Traditional Knowledge

1. Each Party shall protect the collective intellectual property rights and the traditional knowledge of indigenous peoples and local and ethnic communities in which any of their creations that are used commercially. Such protection shall be done through a special system of registering, promoting, and marketing their rights, with a view to emphasize the autochthonous sociological and cultural values of the indigenous people and the local and ethnic communities and to bring them social justice.

2. Each Party shall protect the collective rights, traditional knowledge and practices of its indigenous peoples and local and ethnic communities in association with the conservation and sustainable use of biological diversity through a special sui generis intellectual property registration system.

3. Each Party shall recognize that the customs, traditions, beliefs, spirituality, religiosity, cosmos vision, folklore expressions, artistic manifestations, traditional skills and any other forms of traditional expression of the indigenous peoples and local and ethnic communities are a part of their cultural heritage.

4. Each Party shall recognize that the cultural heritage is not subject to any type of exclusivity by third parties applying an intellectual property system. However, the indigenous peoples and local and ethnic communities may authorize third parties to make use of such heritage, in the understanding that this shall not be an exclusive right.

Article 17.18. Protection of Folklore

Each Party shall ensure the effective protection of all expressions and manifestations of folklore, as well as the artistic manifestations of the traditional and popular culture of the indigenous peoples and local and ethnic communities.

Article 17.19. Relation between Access to Genetic Resources and Intellectual Property

Each Party shall protect the conservation and sustainable use of biological diversity, the access to its genetic resources and the traditional knowledge developed by the indigenous peoples and local and ethnic communities regarding the use of biological resources that contain such genetic resources, while recognizing a fair and equitable participation in the benefits derived from the access to its genetic resources and the traditional knowledge associated with these resources by the indigenous peoples and local and ethnic communities.

Section I. Border Measures

Article 17.20. Application of Border Measures

1. Each Party shall provide that its customs authorities have the authority to take border measures with respect to imported, exported, or in-transit goods suspected of infringing an intellectual property right.

2. Each Party shall act on requests for specific "in audita altera parte" precautionary measures and shall implement such requests expeditiously, in accordance with the regulations governing its legal procedures.

Section J. Cooperation on Intellectual Property

Article 17.21. Technical Cooperation

For establishing the technical cooperation system regarding intellectual property, the Parties shall bear in mind the following initial priority activities, based upon mutually agreed terms and conditions:

(a) the development and implementation of electronic systems for the administration of the entire intellectual property system;

(b) the development of educational projects and the dissemination of information regarding the use and benefits of intangible goods as an instrument for research and innovation;

(c) the development of projects towards strengthening respect and observance of intellectual property rights;

(d) the holding of training programs that include seminars, workshops, practical training or in situ internships and specialization courses, as well as the exchange of technical personnel;

(e) the exchange, whenever possible, of available information between the Intellectual Property Offices and other institutions pertaining to the Parties, on any legal issue relevant to this Chapter, in particular the evolution of legislation regarding regulations, executive decisions, operational practices, procedures and legal rulings regarding intellectual property rights. Exchanged could also be any publications regarding intellectual property rights, such as newspaper or magazine articles, official publications, booklets, and so on. All information exchanged is suggested to be written in English whenever possible; and

(f) the development of projects on the use of information and technology transfer between the Parties.

Annex 17.06. Intellectual Property Committee

The Intellectual Property Committee under Article 17.06 shall consist of:

(a) in the case of Nicaragua, the Ministerio de Fomento, Industria y Comercio, through the Registro de Propiedad Intelectual ; and

(b) in the case of the Republic of China (Taiwan), the Ministry of Economic Affairs, through the Intellectual Property Office, or their successors.

Part Seven. Labor & Environment

Chapter 18. Labor

Article 18.01. Statement of Shared Commitment

The Parties affirm their full respect for their Constitutions. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Annex 18.01 and shall strive to improve those standards in that light.

Article 18.02. Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) Each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Annex 18.01 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

Article 18.03. Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally 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, judicial, or labor tribunals, as provided in the Party's domestic law.

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 provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

5. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws.

6. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and

(b) encouraging education of the public regarding its labor laws.

7. For greater certainty, decisions or pending decisions by each Party's administrative, judicial, or labor tribunals, as well as related proceedings, shall not be subject to revision or be reopened under the provisions of this Chapter.

Article 18.04. Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Committee, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Committee shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 18.05, and to pursue the labor objectives of this Agreement.

3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Party, and with the public, for purposes of carrying out the work of the Committee, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Party and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures.

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

Article 18.05. Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues can play an important role in advancing development in the territory of the Parties and in providing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in Annex 18.01, the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 18.05. The Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. While endeavoring to strengthen each Party's institutional capacity to fulfill the common goals of the Agreement, the Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism, and the activities undertaken through that Mechanism:

(a) are consistent with each Party's national programs, development strategies, and priorities;

(b) provide opportunities for public participation in the development and implementation of such objectives and activities; and

(c) take into account each Party's economy, culture, and legal system.

Article 18.06. Principles of Corporate Stewardship

Recognizing the substantial benefits brought by international trade and investment as well as the opportunity for enterprises to implement policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives, each Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties.

Article 18.07. Cooperative Labor Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 18.04.3.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Committee be convened to consider the matter by delivering a written request to the contact point of the other Party.

5. The Committee shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. Where appropriate, the consulting Parties may agree on a mutually satisfactory action plan to resolve the matter, which normally shall conform to the determinations and recommendations, if any, of the Committee.

7. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

Article 18.08. Definitions

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the internationally recognized labor rights set out in Annex 18.01; and

statutes or regulations means:

(a) for the Republic of Nicaragua, laws of its legislative body or regulations promulgated pursuant to an act of its legislative body that are enforceable by action of the executive body; and

(b) for the Republic of China (Taiwan), laws of its legislative body or regulations promulgated pursuant to a law of its legislative body that are enforceable by action of the executive body.

Annex 18.01. Labor Principles

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

4. Prohibition of forced labor

The prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally

considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes and work exacted in cases of emergency.

5. Labor protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

Annex 18.05. Labor Cooperation and Capacity Building Mechanism

Organization and Principal Functions

1. The Labor Affairs Committee working through each Party's contact point shall coordinate the activities of the Labor Cooperation and Capacity Building Mechanism. The contact points shall meet within six months after the date of entry into force of this Agreement and thereafter as often as they consider necessary.

2. The contact points shall cooperate to:

(a) establish priorities, with particular emphasis on those subjects identified in paragraph 3 of this Annex, for cooperation and capacity building activities on labor issues;

(b) develop specific cooperative and capacity building activities in accordance with such priorities;

(c) exchange information regarding each Party's labor laws and practices, including best practices, as well as ways to strengthen them; and

(d) seek support, as appropriate, from international organizations, to advance common commitments regarding labor matters.

Cooperation and Capacity Building Priorities

3. The Mechanism may initiate bilateral or regional cooperative activities on labor issues, which may include, but need not be limited to:

(a) internationally recognized labor rights and their effective application: legislation and practice (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation);

(b) employment opportunities: promotion of new employment opportunities and workforce modernization;

(c) technical issues: programs, methodologies, and experiences regarding productivity improvement, encouragement of best labor practices, and the effective use of technologies, including those that are Internet-based;

(d) worst forms of child labor. legislation and practice;

(e) labor administration. institutional capacity of labor administrations and tribunals, especially training and professionalization of human resources, including career civil service;

(f) labor inspectorates and inspection systems: methods and training to improve the level and efficiency of labor law

enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws;

(g) alternative dispute resolution: initiatives aimed at establishing alternative dispute resolution mechanisms for labor disputes;

(h) labor relations: forms of cooperation and dispute resolution to ensure productive labor relations among workers, employers, and governments;

(i) working conditions: mechanisms for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;

(j) migrant workers: dissemination of information regarding labor rights of migrant workers in each Party's territory;

(k) social assistance programs: human resource development and employee training, among other programs;

(l) labor statistics: development of methods for the Parties to generate comparable labor market statistics in a timely manner; and

(m) gender: gender issues, including the elimination of discrimination in respect of employment and occupation.

implementation of Cooperative Activities

4. Pursuant to the Mechanism, the Parties may cooperate on labor issues using any means they deem appropriate, including, but not limited to:

(a) technical assistance programs, including by providing human, technical, and material resources, as appropriate;

(b) exchange of official delegations, professionals, and specialists, including through study visits and other technical exchanges;

(c) exchange of information on standards, regulations, and procedures, and best practices, including pertinent publications and monographs;

(d) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(e) collaborative projects or demonstrations; and

(f) joint research projects, studies, and reports, including by engaging independent specialists with recognized expertise.

Public Participation

5. In identifying areas for labor cooperation and capacity building, and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as those of other members of the public.

Chapter 19. Environment

Article 19.01. Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.

Article 19.02. Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections

afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 19.03. Procedural Matters

1. Each Party shall ensure that judicial or administrative proceedings, in accordance with its law, are available to sanction or remedy violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law and be open to the public, except where the administration of justice otherwise requires.

(b) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.

(c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

(i) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(ii) may include criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of activities, and requirements to take remedial action or pay for damage to the environment.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 1.

4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights such as:

(a) to sue another person under that Party's jurisdiction for damages under that Party's laws;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;

(c) to request that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction that is contrary to that Party's environmental laws or that violates a legal duty under that Party's law relating to human health or the environment.

5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. For greater certainty, nothing in this Chapter shall be construed to call for the examination under this Agreement of whether a Party's judicial or administrative tribunals have appropriately applied that Party's environmental laws.

Article 19.04. Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 19.03. As appropriate and in accordance with its law, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific

organizations;

(ii) voluntary guidelines for environmental performance; or

(iii) sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and indicators used in measuring environmental performance; and

(b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Article 19.05. Principles of Corporate Stewardship

Recognizing the substantial benefits brought by international trade and investment as well as the opportunity for enterprises to implement policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives, each Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties.

Article 19.06. Environmental Affairs Committee

1. The Parties hereby establish an Environmental Affairs Committee comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Committee.

2. The Committee shall meet within the first year after the date of entry into force of this Agreement, and once every two years thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter.

3. In order to share innovative approaches for addressing environmental issues of interest to the public, the Committee shall ensure a process for promoting public participation in its work, including by engaging in a dialogue with the public on those issues.

4. The Committee shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities.

Article 19.07. Opportunities for Public Participation

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.

2. Each Party shall make best efforts to accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.

3. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, to provide views on matters related to the implementation of this Chapter.

4. The Parties shall take into account public comments and recommendations regarding cooperative environmental activities undertaken pursuant to Article 19.08.

Article 19.08. Environmental Cooperation

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

2. The Parties are committed to expanding their cooperative relationship, recognizing that cooperation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.

3. The Parties recognize that strengthening their cooperative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services. The Parties have established an Environment Cooperation Mechanism (ECM) as set out in Annex 19.08.

Article 19.09. Environmental Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the other Party.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter and information exchanged by the consulting Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

Article 19.10. Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are party and trade agreements to which they are party.

2. For greater certainty, nothing in this Chapter shall be construed to affect the existing rights and obligations of the Parties under other international environmental agreements, including conservation agreements, to which such Parties are party.

Article 19.11. Definitions

For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

For greater certainty, environmental law does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

For purposes of the definition of "environmental law," the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part; and

statute or regulation means:

(a) for the Republic of Nicaragua, a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body; and

(b) for the Republic of China (Taiwan), a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body.

Annex 19.08. Environmental Cooperation Mechanism

Shared objectives

1. The Parties recognize the importance of promoting all possible forms of cooperation to protect and improve the environment and to promote the optimal use, conservation and sustainable development of their natural resources, taking into consideration their respective levels of development, technologies and financial resources.

2. The Parties agree to cooperate to protect, improve and conserve the environment, including natural resources. The objective of the Environmental Cooperation Mechanism (ECM) is to establish a framework for such cooperation among the Parties. The Parties recognize the importance of bilateral cooperation to achieve this objective.

Modalities and Forms of Cooperation

3. Cooperation developed under the ECM may occur through capacity-building activities, consistent with Article 19.08, on the basis of technical and financial assistance programs, including but not limited to:

(a) the exchange of delegations, professionals, technicians and specialists from the academic sector, nongovernmental organizations, industry and the governments, including study visits, to strengthen the development, implementation and assessment of environmental policies and standards;

(b) the organization of conferences, seminars, workshops, meetings, training sessions and outreach and education programs;

(c) the development of programs and actions, including technological and practical demonstrations, applied research projects, studies and reports;

(d) the facilitation of partnerships, linkages or other new channels for the development and transfer of knowledge and technologies among representatives from academia, industry, intergovernmental and nongovernmental organizations, and government to promote the development and/or exchange of best practices and environmental information and data likely to be of interest to the Parties;

(e) the collection, publication and exchange of information on environmental policies, laws, standards, regulations, indicators, national environmental programs and compliance and enforcement mechanisms;

(f) financial assistance, as appropriate and mutually agreed, for research projects, biodiversity management and monitoring, wildlife species affected by trade, pollution, and hazardous and non hazardous waste treatment; and

(g) any other forms of environmental cooperation that may be agreed by the Parties.

Organization and Principal Functions

4. The Parties working through the contact points established under Article 19.06.1 shall be responsible for:

(a) establishing priorities for cooperative activities under the ECM;

(b) developing a program of work as described below in accordance with those priorities;

(c) examining and evaluating the cooperative activities under the ECM;

(d) making recommendations and providing guidance to the Parties on ways to improve future cooperation; and

(e) undertaking such other activities on which the Parties may agree.

5. The contact points shall meet once every two years in a country previously agreed upon by the Parties. The first meeting shall take place within six months after the Agreement enters into force.

6. The contact points may meet between the dates established in paragraph 5 to analyze and promote the implementation of the ECM and to exchange information on the progress of cooperative programs, projects and activities.

7. The contact points shall periodically inform the Environmental Affairs Committee established under Article 19.06, of the status of cooperation activities developed under the ECM.

Program of Work and Priority Cooperation Areas

8. The program of work developed by the contact points shall reflect the Party's priorities for cooperative activities. The program of work may include long-, medium-, and short-term activities related to:

(a) strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the capacity to develop, implement, administer and enforce environmental laws, regulations, standards and policies;

(b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, conservation and the sustainable use of biodiversity, including the development of market-based initiatives and economic incentives for environmental management;

(c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;

(d) developing and promoting conservation and sustainable management systems for endangered species affected by international commercial trade;

(e) developing and promoting conservation, research and management systems for protected areas;

(f) developing and promoting conservation, restoration and research projects for coastal zones and ecosystems;

(g) promoting best practices leading to sustainable management of the environment;

(h) facilitating technology development and transfer and training to promote the use, proper operation and maintenance of clean production technologies;

(i) developing and promoting environmental goods and services;

(j) building capacity to promote public participation in the process of environmental decision-making;

(k) exchanging information and experiences among Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level;

(l) facilitating technology development, transfer and training on protection, conservation and preservation of basins and water bodies;

(m) facilitating technology development and transfer and training on hazardous and non hazardous waste management;

(n) facilitating technology development and transfer and assistance for research, monitoring and management of biodiversity and endangered species affected by international commercial trade; and

(o) any other areas for environmental cooperation on which the Parties may agree.

9. In developing cooperative programs, projects and activities, the Parties shall develop benchmarks or other types of performance measures to assist the contact points in their ability to examine and evaluate the progress of specific cooperative programs, projects and activities in meeting their intended goals.

10. In developing its program of work, the Committee should consider the mechanisms by which cooperative activities may be financed and the adequate allocation of human, technological, material, and organizational resources that may be required for the effective implementation of the cooperation activities in accordance with the capacities of the Parties. The following funding mechanisms may be considered for environmental cooperation:

(a) cooperative activities jointly financed as agreed by the Parties;

(b) cooperative activities financed as agreed by one of the Parties;

(c) non refundable cooperative activities jointly financed as agreed by the Parties; or

(d) cooperative activities financed, as appropriate, by private institutions, foundations, or public international organizations, including through ongoing programs.

11. Each Party shall facilitate, in accordance with its laws and regulations, duty free entry for goods including materials and equipment provided pursuant to cooperative activities provided for under the Agreement.

Public Participation

12. In identifying areas for environmental cooperation and capacity building, and in carrying out cooperative activities, each Party shall consider when appropriate the views of its nationals.

Part Eight. Administrative and Institutional Provisions

Chapter 20. Transparency

Section A. Transparency

Article 20.01. Contact Points

1. Each Party shall designate, within 60 days of the date of entry into force of this Agreement, a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

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

Article 20.02. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties (1) to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

(1) For purposes of this Agreement, in all references to publication, the Parties, to the maximum extent possible, shall publish a summary in English version.

Article 20.03. Notification and Provision of Information

1. To the maximum extent possible, a Party shall notify the other Party with an interest in the matter 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. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not 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.

Article 20.04. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 20.02 to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 20.05. Review and Appeal

1. Each Party shall establish or maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 20.06. Definitions

For purposes of this Section:

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

(a) a determination or ruling made in an administrative proceeding that applies to a particular person, good, or service of another Party in a specific case; or

(b) ar ruling that adjudicates with respect to a particular act or practice.

Section B. Anti-Corruption

Article 20.07. Statement of Principle

The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment.

Article 20.08. Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party shall adopt or maintain appropriate criminal penalties and procedures to enforce the measures set out in paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption described in paragraph 1.

Article 20.09. Cooperation In International Fora

The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

Article 20.10. Definitions

For purposes of this Section:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at any level of government; and

public official means any official or employee of a Party at all levels of the government, whether appointed or elected.

Chapter 21. Administration of the Agreement

Article 21.01. The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties, as set out in Annex 21.01, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee the further elaboration of this Agreement;

(c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(d) supervise the work of all committees and working groups established under this Agreement; and

(e) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) establish and delegate responsibilities to committees and working groups;

(b) modify in fulfillment of the Agreement's objectives:

(i) the Schedules attached to Annex 3.03 (Customs Tariff Elimination Schedule), by accelerating tariff elimination; and

(ii) the rules of origin established in Annex 4.02 (Specific Rules of Origin);

(c) Issue interpretations of the provisions of this Agreement; (d) seek the advice of non-governmental persons or groups; and

(e) take such other action in the exercise of its functions as the Parties may agree.

4. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in

subparagraph 3(b) within such period as the Parties may agree.

5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement, unless the Commission otherwise decides.

6. The Commission shall convene at least once a year in regular session, unless the Commission otherwise decides. Regular sessions of the Commission shall be chaired successively by each Party.

Article 21.02. Free Trade Agreement Coordinators

1. Each Party shall appoint a free trade agreement coordinator, as set out in Annex 21.02.

2. The coordinators shall work jointly to develop agendas and make other preparations for Commission meetings and shall follow-up on Commission decisions, as appropriate.

Article 21.03. Administration of Dispute Settlement Proceedings

1. Each Party shall:

(a) designate an office that shall provide administrative assistance to the panels established under Chapter 22 (Dispute Settlement) and perform such other functions as the Commission may direct; and

(b) notify the Commission of the location of its designated office.

2. Each Party shall be responsible for:

(a) the operation and costs of its designated office; and

(b) the remuneration and payment of expenses of panelists and experts, as set out in Annex 21.03.

Annex 21.01. The Free Trade Commission

The Free Trade Commission shall be composed of:

(a) in the case of the Republic of Nicaragua, the Ministro de Fomento, Industria y Comercio; and

(b) in the case of Republic of China (Taiwan), the Minister of Economic Affair,

or their successors.

Annex 21.02. Free Trade Agreement Coordinators

The free trade agreement coordinators shall be composed of: (a) _ in the case of the Republic of Nicaragua, the Director General de Comercio Exterior del Ministerio de Fomento, Industria y Comercio (MIFIC); and

(b) in the case of Republic of China (Taiwan), the Director General of the Bureau of Foreign Trade, Ministry of Economic Affairs,

or their successors.

Annex 21.03. Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to panelists and experts.

2. The remuneration of panelists and their assistants, experts, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the disputing Parties.

3. Each panelist and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

Chapter 22. Dispute Settlement

Section A. Dispute Settlement

Article 22.01. Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 22.02. Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement; or

(c) wherever a Party considers that an actual or proposed measure of the other Party causes or would cause nullification or impairment in the sense of Annex 22.02.

Article 22.03. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. In any dispute referred to in paragraph 1 where the Party complained against claims that its action is subject to Article 1.04 (Relation to Other International Agreement in Environmental and Conservation) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

3. Where a Party has requested the establishment of an arbitral group under Article 22.07. or has requested the establishment of a arbitral group under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement, the forum chosen shall be used to the exclusion of the other.

Article 22.04. Urgent Cases

1. In cases of urgency, the Parties and the arbitral groups shall make every effort to accelerate to the greatest extent the proceedings.

2. In cases of perishable agricultural goods, fish and fish products that are perishable:

(a) a Party may request in writing that the Commission meet, when an issue is not resolved in accordance with Article 22.05 within 15 days following the submission of the request for consultations; and

(b) the Party that has requested the intervention of the Commission, may request in writing the formation of an arbitral group when the issue has not been resolved within 15 days after the meeting of the Commission, or if the Commission has not met, within 15 days after submitting the request for such a meeting.

Article 22.05. Consultations

1. A Party may request in writing consultations to the other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the

information.

4. In consultations under this Article, a Party may request to the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations. (1)

(1) A Party receiving such a request shall strive to accommodate it.

Article 22.06. Commission - Good Offices, Conciliation, and Mediation

1. Any Party may request in writing a meeting of the Commission, if the Parties fail to resolve a matter pursuant to Article 22.05 within:

(a) 60 days of receipt of a request for consultations;

(b) 15 days of receipt of a request for consultations in matters of Urgent cases; described in Article 22.04.2; or

(c) such other period as both Parties may agree.

2. The Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. Unless it decides otherwise, the Commission shall convene within ten days of receipt of the request and shall endeavor to resolve the dispute promptly. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation, or such other dispute resolution procedures; or

(c) make recommendations;

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

Article 22.07. Request for Establishment of an Arbitration Group

1. If the Parties fail to resolve a matter within:

(a) 30 days after the Commission has convened pursuant to Article 22.06;

(b) 30 days after a Party has received a request for consultations under Article 4 in a matter regarding urgent cases, if the Commission has not convened pursuant to Article 22.04.2;

(c) 75 days after a Party has received a request for consultations under Article 22.05, if the Commission has not convened pursuant to Article 22.06.4; or

(d) such other period as the Parties may agree;

any Party that requested a meeting of the Commission with regard to the measure or other matter in accordance with Article 22.06 may request in writing the establishment of an arbitral group to consider the matter. The Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint sufficient to present the problem clearly.

2. An arbitral group shall be established within three days upon receipt of a request.

3. Unless otherwise agreed by the Parties, the arbitral group shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

4. An arbitral group may not be established to review a proposed measure.

Article 22.08. Roster

1. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain a roster of up to 20 individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, up to six members of the roster shall be nationals of each Party, and up to four members of the roster shall be selected from among individuals who

are not nationals of any Party. The roster members shall be appointed by mutual agreement, and may be reappointed.

2. To meet the deadline referred to in paragraph 1, each Party shall: (1) by day 75, submit its nominees to the other Party; (2) by day 120, approve or reject the nominees of the other Party; and (3) by day 150, submit additional nominees in place of any nominees that the other Party has rejected. The Parties shall finalize the initial roster by day 180.

3. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

Article 22.09. Qualifications of Panelists

1. All the arbitrators shall meet the following qualifications:

(a) have specialized knowledge or experience in law, international trade, other matters related to this Agreement, or in the settlement of disputes arising from international trade agreements;

(b) be elected strictly according to their objectivity, integrity, reliability and good judgement;

(c) be independent, not associated with, and not accepting instructions from any Party; and

(d) observe the Code of Conduct that the Commission establishes.

2. Persons that have participated in a dispute under Article 22.06.3 cannot serve as arbitrators for the same dispute.

Article 22.10. Arbitral Group Selection

1. The Parties shall apply the following procedures in selecting an arbitral group:

(a) the arbitral group shall comprise three members;

(b) the Parties shall endeavor to agree on the chair of the arbitral group within 15 days of the receipt of the request for the establishment of the arbitral group. If the Parties are unable to agree on the chair within this period, the chair shall be selected by lot within three days from among the roster members who are not nationals of a Party;

(c) within 15 days of selection of the chair, the complaining Party shall select one panelist and the Party complained against shall select one panelist;

(d) if either Party fail to select a panelist within this period, the panelist shall be selected by lot within three days from among the roster members who are nationals of such Party, as the case may be; and

(e) each Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.

2. Panelists shall normally be selected from the roster. Any Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a Party within 15 days after the individual has been proposed.

3. If a Party believes that a panelist is in violation of the Code of Conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 22.11. Model Rules of Procedure

1. The Commission shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure:

(a) a right to at least one hearing before the arbitral group, which, subject to subparagraph (e), shall be open to the public;

(b) an opportunity for each Party to provide initial and rebuttal written submissions;

(c) that each participating Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the arbitral group shall be public, subject to subparagraph (e);

(d) that the arbitral group will consider requests from non-governmental entities in the Parties' territories to provide written views regarding the dispute that may assist the arbitral group in evaluating the submissions and arguments of the Parties;

and

(e) the protection of confidential information.

2. Unless the Parties otherwise agree, the arbitral group shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. The Commission may modify the Model Rules of Procedure.

4. Unless the Parties otherwise agree within 20 days from the date of the receipt of the request for the establishment of the arbitral group, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the arbitral group request and to make findings, determinations, and recommendations as provided in Articles 22.11.6 and 22.13.3 and to deliver the written reports referred to in Articles 22.13 and 22.14."

5. If the complaining Party in its arbitral group request has identified that a measure has nullified or impaired benefits, in the sense of Annex 22.02, the terms of reference shall so indicate.

6. If a Party wishes the arbitral group to make findings as to the degree of adverse trade effects on any Party of a Party's inconsistency to conform with the obligations of this Agreement or of a Party's measure found to have caused nullification or impairment in the sense of Annex 22.02, the terms of reference shall so indicate.

Article 22.12. Role of Experts

On request of a Party, or on its own initiative, the arbitral group may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 22.13. Preliminary Report

1. Unless the Parties otherwise agree, the arbitral group shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information before it pursuant to Article 22.12.

2. If the Parties request, the arbitral group may make recommendations for resolution of the dispute.

3. Unless the Parties otherwise agree, the arbitral group shall, within 120 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 22.11 may provide, present to the Parties an preliminary report containing:

(a) findings of fact, including any findings pursuant to a request under Article 22.11.6;

(b) its determination as to whether a Party's measure is or might be inconsistent with the obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Annex 22.02, or any other determination requested in the terms of reference; and

(c) its recommendations, if the Parties have requested them, for resolution of the dispute.

4. When the arbitral group considers that it cannot provide its report within 120 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate time to provide its report. In no case should the period to provide the report exceed 180 days. The arbitral group shall inform the Parties of any determination under this paragraph no later than seven days after the initial written submission of the complaining Party and shall adjust the remainder of the schedule accordingly.

5. Panelists may furnish separate opinions on matters not unanimously agreed.

6. A Party may submit written comments to the arbitral group on its preliminary report within 14 days of presentation of the report or within such other period as the Parties may agree.

7. After considering any written comments on the preliminary report, the arbitral group may reconsider its report and make any further examination it considers appropriate.

Article 22.14. Final Report

1. The arbitral group shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the preliminary report, unless the Parties otherwise agree. The Parties shall release the final report to the public within15 days thereafter, subject to the protection of confidential information.

2. No arbitral group may, either in its preliminary report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 22.15. Implementation of Final Report

1. The final report shall make mandatory for the Parties the requirements and periods that it orders. The timeframe for implementing the final report shall not exceed six months from the date on which the final report was notified to the Parties, unless the Parties agree on a different timeframe.

2. If the final report of the arbitral group states that the measure is inconsistent with this Agreement, the Party complained against shall refrain from executing the measure or shall repeal it.

3. If the final report states that the measure is a cause of nullification or impairment as set out in Annex 22.02, it shall specify the degree of nullification or impairment and may suggest the adjustments that it considers mutually satisfactory for the Parties.

4. Within five days after the expiration of the timeframe determined by the arbitral group, the Party complained against shall inform the arbitral group and the other Party of actions adopted to comply with the final report. Within 30 days after expiration of the timeframe as referred to in paragraphs 1, the arbitral group shall determine whether the Party complained against has complied with the final report. In case the arbitral group determines that the Party complained against has not complied with the final report, the complaining Party may suspend benefits in accordance with Article 22.16.

Article 22.16. Suspension of Benefits

1. The complaining Party may suspend the benefits to the defendant Party arising from this Agreement that have an effect equivalent to the benefits not received, if the arbitral group decides that:

(a) a measure is inconsistent with the obligations of this Agreement and that the defendant Party has not complied with the final report within the timeframe determined by the arbitral group in the final report; or

(b) a measure is a cause of nullification or impairment as set out in Annex 22.02 and the Parties have not reached a mutually satisfactory agreement on the dispute within the timeframe determined by the arbitral group.

2. The suspension of benefits shall last until the Party complained against complies with the final report or until the Parties reach a mutually satisfactory agreement on the dispute, as the case may be. When the Party complained against, after suspension of benefits, considers that it has adopted measures necessary to implement the final report and the complaining Party does not restore benefits previously suspended, it may ask for the establishment of an arbitral group in accordance with paragraph 4 to determine if it has complied with the final report.

3. In considering the benefits to be suspended in accordance with this Article:

(a) the complaining Party shall endeavor first to suspend benefits within the same sector or sectors affected by the measure or by other matter considered by the arbitral group as inconsistent with the obligations arising from this Agreement or that has been a cause of nullification or impairment as set out in Annex 22.02; and

(b) if the complaining Party considers that it is not feasible nor effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

4. Once the benefits have been suspended pursuant to this Article, the Parties, by request in writing from a Party, shall establish an arbitral group if necessary to determine if the final report has been complied with or if the level of benefits suspended to the Party complained against by the complaining Party under this Article is obviously excessive; the Request shall be deliver to the other Party and to the designated office. To the extent practicable, the arbitral group shall be composed of the same arbitrators who have knowledge over the dispute.

5. The proceedings before the arbitral group established for purposes of paragraph 4 shall be carried forward pursuant to the Model Rules of Procedure set out in Article 22.11 and the final report shall be issued within 60 days of the nomination of the last arbitrator, or any other timeframe agreed upon by the Parties. If this arbitral group was composed of the same arbitrators who have knowledge over the dispute, it shall present its final report within 30 days of the presentation of the request referred to in paragraph 4.

Article 22.17. Compliance Review

1. Without prejudice to the procedures set out in Article 22.16.4, if the Party complained against considers that it has eliminated the inconsistence or the nullification or impairment that the arbitral group has found, it may refer the matter to the arbitral group by providing written notice to the complaining Party. The arbitral group shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the arbitral group decides that the Party complained against has eliminated the inconsistence or the nullification or impairment, the complaining Party shall promptly reinstate any benefits that Party has suspended under Article 22.16.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 22.18. Referral of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify to the other Party and the designated office. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 22.19. Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the grounds that a measure of that Party is inconsistent with this Agreement.

Article 22.20. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of international agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes, for which the Parties will fulfill the dispositions of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

3. The Commission may establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes.

4. This committee shall:

(a) report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use, and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area; and

(b) when the committee considers appropriate, promote technical cooperation between the Parties, in furtherance of the objectives identified in paragraph 1.

Annex 22.02. Nullification or Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Chapters 3 through 5 (National Treatment and Market Access for Goods, Rules of Origin and Related Customs Procedures, and Trade Facilitation);

(b) Chapters 8 (Sanitary and Phyto-Sanitary Measures);

(c) Chapter 9 (Technical Barriers to Trade);

(d) Chapter 11 (Cross Border Trade in Services); or

(e) Chapter 17 (Intellectual Property Rights);

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke paragraph (d) or (e) with respect to any measure subject to an exception under Article 23.01 (General Exceptions).

3. To determine the elements of nullification and impairment, the Parties may take into account the principles set out in the jurisprudence of paragraph 1(b) of Article XXIII of GATT 1994.

Annex 22.11.(a)(c). Model Rules of Procedure, Public Access to Documents and Public Hearings

Public Access to Documents

1. Subject to paragraph 2 of this Annex, all documents (2) submitted to, or issued by, an arbitral group and all notifications made pursuant to this chapter are public. The designated office of each Party shall make such documents and notifications available to the public as soon as is reasonably possible after they are received.

2. The following documents are confidential and may not be made available to the public:

(a) A preliminary report presented to the Parties pursuant to Article 13 (Preliminary Report) and any comments to it; and

(b) any document submitted to a arbitral group by a Party that contains information designated by the Party as confidential, in the terms established on Annex 22.11.1.(e) of this chapter.

3. Where a Party designates information contained in a document it submits to the arbitral group as confidential, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public, no later than fifteen (15) days after the date of the request (3).

Public Hearings

4. All hearings of the arbitral group shall be open for the public to observe, unless the Parties otherwise agree. (4) Nevertheless, the arbitral group shall meet in closed sessions when the submission and arguments of the Parties contains confidential information. The Parties shall maintain the confidentiality of the arbitral groupâs hearings, to the extent that the arbitral group holds the hearing in closed session. Each Party shall treat as confidential the information submitted by the other Party to the arbitral group which that Party has designated as confidential. Nothing in this Annex shall preclude a Party from disclosing statements of its own positions to the public.

5. A Party that wishes to submit confidential information during a hearing of the arbitral group shall inform the arbitral group prior to so doing. The arbitral group shall close the hearing to observation by the public for the duration of the submission and any discussion of such confidential information.

6. The deliberations of the arbitral group shall be conducted in private and kept confidential. Nevertheless, the arbitral group may permit their assistants and experts to be present during such deliberations.

(2) The term "documents" is not intended to include documents that are purely administrative in nature. The scope and coverage of the term "documents" is established in the definitions of paragraph 3 of Annex 22.11.1.(e) of this chapter.

(3) Under no circumstances shall an entire submission or significant parts of it be designated as confidential information. To the extent possible, confidential information should be submitted in an exhibit or annex to a submission.

(4) The expression "observe" does not require physical presence at the hearing. To facilitate public observation of hearings of the arbitral group, such hearings may be transmitted simultaneously to a public viewing location designated by the arbitral group.

Annex 22.11.1(d). Model Rules of Procedure, Non-governmental Entity Participation

1. Unless the Parties otherwise agree, within three (3) days following the date of establishment of the arbitral group, the arbitral group may grant leave to any non- governmental entity to file a written submission directly relevant to any legal or factual issue under consideration by the arbitral group.

2. A non-governmental entity wishing to make a written submission to the arbitral group must apply to the arbitral group for leave to file the submission within ten (10) days of the establishment of the arbitral group.

3 The application for leave to file a non-governmental entity written submission shall:

(a) contain a description of the non-governmental entity, including nationality, the nature of the non-governmental entity's activities, membership, legal status, and sources of financing;

(b) contain a statement disclosing whether the non-governmental entity has any relationship, direct or indirect, with any Parties to the Agreement, as well as whether it has received, or will receive, any assistance, financial or otherwise, from the Parties to the Agreement in the preparation of the application for leave or the written submission;

(c) contain a statement disclosing whether the non-governmental entity has a associative, subsidiary or other kind of relationship, direct or indirect, with a non-governmental entity from another country, as well as whether it has received, or will receive, any assistance, financial or otherwise, from a nongovernmental entity from another country;

(d) identify the specific issues of law or fact under consideration by the arbitral group that the non-governmental entity intends to address in the submission;

(e) indicate the substantial interest of the non-governmental entity in the proceeding and why the submission would assist the arbitral group in the determination of a legal or factual issue under consideration by the arbitral group by bringing a perspective, particular knowledge or insight that is different from that of the Parties;

(f) be delivered to the arbitral group, along with three hard copies and one digital copy;

(g) be dated and signed by the non-governmental entity or the non- governmental entity's legal representative, and include the address and other contact details of the non-governmental entity;

(h) be no longer than three typed pages; (i) be made in each language being used in the proceeding; and

(i) conform with any additional requirements established in the Model Rules of Procedure.

4. A non-governmental entity shall notify the application for leave to file a non- governmental entity written submission to the designated offices of all the Parties.

5. The arbitral group shall not grant leave to file a written non-governmental entity submission if the application does not conform to the requirements established in the paragraph 3.

6. Each Party has ten (10) days from the date of notification of an application for leave to file a non-governmental entity written submission to make written comments to the arbitral group on the application.

7. In deciding whether to grant leave, the arbitral group shall take into account all relevant considerations, including:

(a) the submission would assist the arbitral group in the determination of any legal or factual issue under consideration by the arbitral group by bringing a perspective, particular knowledge or insight that is different from that of the Parties;

(b) the non- governmental entity has a substantial interest in the proceeding (5); and

(c) there is a public interest in the proceeding.

8. To minimize the complexity, cost or length of the proceeding, the arbitral group may direct two or more non-governmental entities that have filed separate applications for leave to file a single joint non-governmental entity written submission.

9. The arbitral group shall render its decision on an application to file a non- governmental entity written submission within thirty (80) days from the date of delivery of the application to the arbitral group. The arbitral group shall communicate forthwith to all designated offices of each Party and the non-governmental entity that made the application of the decision of the arbitral group.

10. A non-governmental entity granted leave to file a written submission shall deliver the submission to the arbitral group within ten (10) days from the date the arbitral group notified its decision pursuant to paragraph 9. The non-governmental entity submission shall:

(a) be dated and signed by the non-governmental entity or the non- governmental entity's representative;

(b) be concise and in no case longer than five (5) typed pages, including any appendices;

(c) contain a summary of the non-governmental entity's position on those legal or factual issues under consideration by the arbitral group that are addressed in the submission;

(d) be delivered to the arbitral group, along with three hard copies and one digital copy;

(e) be made in each language being used in the proceeding; and

(f) conform with any additional requirements established in the Model Rules of Procedure.

11. A non-governmental entity shall notify the written submission pursuant paragraph 10 to the designated offices of the Parties.

12. The arbitral group shall not consider any non-governmental entity written submission that does not conform to requirements set forth in paragraphs 10 and 11.

13. Each Party has ten (10) days from the date of notification of a non- governmental entity written submission to make written comments to the arbitral group on the submission.

14. The arbitral group is not required to address in its report legal or factual arguments made in non-governmental entity submissions.

15. This Annex does not grant non-governmental entity any right or privilege other than those expressly provided in the present Annex (6).

(5) For greater certainty, an interest in the development of the "jurisprudence", in the interpretation of the agreement, or in the subject matter of the dispute alone does not suffice in establishing the presence of a substantial interest in the arbitration by a non-governmental entity.

(6) This is aimed at preventing arbitral group provide any incidental or additional rights or privileges, such as: (i) permitting a non-governmental entity to make a supplemental written submission addressing the submission of a party made pursuant to paragraph 13; (ii) permitting non-governmental entities to obtain copies of any written submissions that have not been made available to the public; or (iii) permitting non-governmental entities to speak at an arbitral group hearing.

Annex 22.11.1(e). Model Rules of Procedure, Confidential Information Confidential Information

1. A Party may designate information that it submits to the arbitral group as confidential information. The Information so designated shall be treated in accordance with the procedures established in this Annex.

2. The Free Trade Commission may amend the procedures governing the treatment of confidential information established in this Annex.

Definitions

3. In this Annex,

approved person means: a person who is (i) an authorized representative of a Party; (ii) an authorized employee of the arbitral group, designated in accordance with paragraphs 13 and 14 of this Annex; or (iii) a member of the arbitral group.

authorized employee of the arbitral group means a person employed or appointed by the arbitral group who has been authorized by the arbitral group to work on the dispute, and includes assistants, experts, translators and interpreters and transcribers present at the arbitral group hearings.

authorized representative means:

(a) an employee of a Party; or

(b) a legal counsel or other advisor or consultant of a Party who has been authorized by the Party to act on its behalf in the course of the dispute and whose authorization has been notified to the arbitral group and to the Parties, but excludes in all circumstances a person or an employee, officer or agent of any entity that could reasonably be expected to benefit from the receipt of the confidential information.

confidential information means any reserved or sensitive information that is not available in the public domain and is designated as confidential

document includes any written matter, whether in printed or binary-encoded form.

information means information however recorded or stored, including in printed documents and binary-encoded files, and spoken information.

record means any medium on which information is recorded or stored.

General Principles

4. Each Party shall ensure that its authorized representatives comply with the procedures set forth in this Annex. The arbitral group shall ensure that all other approved persons comply with these procedures.

5. Each Party shall exercise the utmost restraint in designating information as confidential (7).

(7) The treatment of information as confidential under this paragraph imposes a substantial burden on the arbitral group and the Parties. The indiscriminate designation of information as confidential could limit the ability of a Party to fully include in its litigation team individuals who have particular knowledge and expertise relevant to presenting its case, impede the work of the arbitral group and complicate the arbitral group's task in formulating credible public findings and conclusions.

Identification of Confidential Information

6. A Party that designates information as confidential information shall identify confidential information by:

(a) clearly marking information recorded in printed records, with the notation "CONFIDENTIAL INFORMATION";

(b) clearly marking information recorded in binary-encoded files with the notation "CONFIDENTIAL INFORMATION" on a label on the record and by clearly annotating the information where it appears in the files with the notation "CONFIDENTIAL INFORMATION"; and

(c) declaring spoken information to be "Confidential Information" prior to its disclosure.

7. Where a Party submits confidential information first submitted by the other Party, it shall identify that information as confidential information by:

(a) clearly marking the information recorded in printed records with the notation "CONFIDENTIAL INFORMATION" and with the name of the Party that first submitted the information;

(b) clearly marking the information recorded in binary-encoded files with the notation "CONFIDENTIAL INFORMATION" on a label on the record and by clearly annotating the information where it appears in the files with the notation "CONFIDENTIAL INFORMATION" and with the name of the Party that first submitted the information; and

(c) prior to its disclosure, declaring spoken information to be "Confidential Information" and identifying the Party that first submitted the information.

Submission of Confidential Information by a Party

8. A Party submitting an exhibit containing confidential information shall submit copies of the exhibit to the arbitral group and to the other Party through its designated office.

9. If a Party objects to the designation of information as confidential information, to the other Party, the arbitral group shall decide if the information meets the definition of confidential information of this Annex. If the arbitral group considers that the information does not meet the definition, the Party submitting the information may:

(a) withdraw the information, in which case the arbitral group and the other Party shall promptly return any record containing the information to the Party submitting it; or

(b) withdraw the designation of the information as confidential information.

10. A Party submitting a document containing confidential information shall also provide, upon request of the other Party and no later than 15 days after the date of the request:

(a) a version of the document edited to remove the confidential information, redacted in such a manner as to convey a reasonable understanding of the substance of the confidential information; or

(b) in exceptional circumstances, a written statement that:

(i) an edited version cannot be made, or

(ii) an edited version would disclose facts that the Party has a proper reason for wishing to keep confidential.

11. If the arbitral group considers that an edited version of a document does not fulfill the requirements of paragraph 10(a) or that exceptional circumstances do not exist to justify a statement pursuant to paragraph 10(b), the arbitral group may decline to consider the confidential information in question. In such a case, the Party submitting the information may:

(a) withdraw the information, in which case the arbitral group and the other Party shall promptly return the document containing the information to the Party submitting it; or

(b) comply with the provisions of paragraph 10 to the satisfaction of the arbitral group.

Approved Persons

12. Each Party shall submit to the other Party and the arbitral group a list of its authorized representatives who need access to confidential information submitted by the other Party and whom it wishes to have designated as approved persons. Each Party shall keep the number less than 30 persons on its list. The arbitral group shall, in the same manner, submit to the Parties a list of the authorized employees who have access to confidential information in the dispute. The Parties may submit amendments to their lists at any time.

13. Subject to paragraph 14 of this Annex, the arbitral group shall designate the approved persons of the Parties on the lists submitted under paragraph 12 of this Annex. All approved persons of the Parties, even the authorized employees of the arbitral group, must filed and present to the arbitral group the Declaration of Non-Disclosure included in this Annex.

14. Inthe event that a Party submitting confidential information objects to a person being designated as approved person, the arbitral group shall decide on the objection forthwith. If the arbitral group allows the designation, the information may not be disclosed to the approved person until the Party submitting the information has had a reasonable opportunity to:

(a) withdraw the information, in which case the arbitral group and the other Party shall promptly return any record containing the information to the Party submitting it; or

(b) withdraw the designation of the information as confidential. Rules for Use and Storage of Confidential Information Governed by this Annex

15. Records containing confidential information shall not be copied, distributed or removed from a locked storage receptacle, except as specifically provided in these procedures.

16. Each Party and the arbitral group shall store in a locked storage receptacle to which only approved persons have access any record containing confidential information submitted to it by the Parties.

17. An approved person shall take all necessary precautions to safeguard confidential information when a record containing the information is in use or being stored.

18. Only approved persons may view or hear confidential information. No approved person who views or hears confidential information may disclose it, or allow it to be disclosed, to any person other than another approved person for the dispute.

19. Approved persons who view or hear confidential information shall use that information only for the purposes of the arbitral group proceedings and for no other purposes.

20. The arbitral group shall not disclose confidential information in its report, but may state conclusions drawn from that information.

21. An approved person viewing or hearing confidential information may take written summary notes of that information for the sole purpose of the arbitral group proceeding. Those notes are subject to the requirements of paragraphs 16, 17 and 25 of this Annex.

22. A Party may bring with it to an arbitral group hearing, for the sole purpose of that hearing, records containing

confidential information that it has received from the other Party, but shall immediately thereafter return those records to their locked storage receptacle pursuant to paragraph 16 of this Annex.

23. A Party that intends to submit confidential information during an arbitral group hearing shall inform the arbitral group prior to so doing. Only approved persons may attend or observe the hearing for the duration of the submission and discussion of that information.

Disposal of Confidential Information

24. After the conclusion of the arbitral group proceeding, within a period fixed by the arbitral group, a Party shall return to the other Party that first submitted confidential information any record containing the confidential information, unless the Party that first submitted the confidential information otherwise agree.

Additional or Alternative Procedures

25. The arbitral group may apply any additional procedures that it considers necessary to protect the confidentiality of confidential information.

26. The arbitral group may, at the request of or with the consent of the Parties, modify or waive any part of the procedures set forth in this Annex.

Punishment of disclosing confidential information

27. Any approved person of a Party revealing the confidential information provided by a Party, shall be subject to prosecution and punishment in the territory of the approved person's Party in accordance with the criminal laws of that territory.

Declaration of Non-Disclosure Form

1. I acknowledge having received a copy of the procedures governing the treatment of confidential information (the "Procedures") found in Annex 22.1.1.(e) (Confidential Information) of chapter 22 (Dispute Settlement).

2. I acknowledge having read and understood the Procedures.

3. I agree to be bound by, and to adhere to, the provisions of the Procedures and,

accordingly, without limitation, to treat confidentially all confidential information that | may view or hear from time to time in accordance with the Procedures.

Executed on this _____day of 200_____.

BY: _____(Signature) Name:_____

Chapter 23. Exceptions

Article 23.01. General Exceptions

1. For purposes of Chapters 3 through 5 (National Treatment and Market Access for Goods, Rules of Origin and Related Customs Procedures, Trade Facilitation), 8 (Sanitary and Phytosanitary Measures) and 9 (Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX (b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters 11 (Cross-Border Trade in Services), 13 (Telecommunications) and 14 (1) (Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) This Article is without prejudice to whether digital products should be classified as goods or services.

Article 23.02. National Security

Nothing in this Agreement shall be construed to:

(a) 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) prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purposes of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent any Party from taking action in fulfilling of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 23.03. 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 any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, the convention shall prevail to the extent of the inconsistency.

3. Where similar provisions with respect to a taxation measure exist under this Agreement and under a tax convention, the procedural provisions of the tax convention alone shall be used, by the competent authorities identified in the tax convention, to resolve any issue related to such provisions arising under this Agreement.

4. Notwithstanding paragraphs 2 and 3:

(a) Article 3.02 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.13 (Export Taxes) shall apply to taxation measures. 5. Subject to paragraphs 2, 3, and 6:

(a) Article 11.02 (National Treatment) and Article 12.02 (National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations, that relate to the purchase or consumption of particular services, and

(b) Articles 10.3 (National Treatment) and 10.04 (Most-Favored Nation Treatment), Articles 11.02 (National Treatment) and 11.3 (Most-Favored Nation Treatment) and Articles 12.02 (National Treatment) and 12.03 (Most-Favored Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations as well as estate, inheritance and gift taxes.

6. Paragraph 5 shall not

(a) impose any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(b) impose on a Party any national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;

(c) impose on a Party any national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the purchase or consumption of a particular service on a requirement that the service be provided in its territory;

(d) apply to a non-conforming provision of any existing taxation measure;

(e) apply to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) apply 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 the Articles referred to in

paragraph 5; or

(g) apply to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS).

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under paragraph 4, Article 10.09 (Performance Requirements) shall apply to taxation measures.

8. Notwithstanding paragraphs 2 and 3, Article 10.7 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 10.16 (Submission of a Claim to Arbitration), where it has been determined pursuant to this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of whether a measure is not an expropriation for a determination to the designated authorities of the Party whose taxation measure is at issue and the Party of the investor at the time that it gives notice under Article 10.16.2. If, within a period of six months from the date of such referral, those authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 10.16.

Article 23.04. Balance of Payments

1. Nothing in this Agreement shall be construed as to prevent a Party from adopting or maintaining measures that restrict trade of goods and services, transfers, or both, where the Party experiences financial or balance of payments difficulties or threat thereof.

2. For purposes of paragraph 1, article XII of GATT 1994, the Understanding on the Balance of Payments Provisions of the GATT 1994, and Article XII of GATS, are hereby incorporated into and made a part of this article.

Article 23.05. 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 23.06. Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include:

(a) a customs duty; or

(b) the measures listed in exceptions (b), (c) and (d) of the definition of customs duty of Article 2.01 (Definitions of General Application).

Annex 23.03 Competent Authorities For purposes of this Chapter: competent authorities means

(a) inthe case of the Republic of Nicaragua, the Ministerio de Hacienda y CrÃ©dito Publico and Banco Central de Nicaragua; and

(b) in the case of the Republic of China (Taiwan), the Ministry of Finance and Central Bank,

or their successors.

Annex 23.03. Competent Authorities

For purposes of this Chapter:

competent authorities means

(a) in the case of the Republic of Nicaragua, Ministerio de Hacienda y Crédito Público and Banco Central de Nicaragua; and

(b) in the case of the Republic of China (Taiwan), Ministry of Finance and Central Bank;

or their successors.

Chapter 24. Final Provisions

Article 24.01. Annexes, Appendices, and Footnotes

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

Article 24.02. Amendments

1. The Parties may agree on any amendment or addition to this Agreement.

2. The amendments or additions agreed shall take effect on the date when so approved in accordance with the applicable legal procedures of each Party, and shall constitute an integral part of this Agreement.

Article 24.03. Reservations

This Agreement may not be subject to reservations or interpretative declarations by either Party at the time of its ratification.

Article 24.04. Entry Into Force

This Agreement shall have indefinite duration and shall enter into force between the Republic of Nicaragua and the Republic of China (Taiwan) on the thirtieth day from the date on which the countries have exchanged their ratification instruments certifying that the procedures and legal formalities have been concluded.

Article 24.05. Accession

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each Party and acceding country or countries.

Article 24.06. Withdrawal

1. Either Party may_withdraw from this Agreement. The withdrawal shall enter into force 180 days after notification to the other Party without prejudice to a different period that the Parties may agree.

2. In the case of the accession of a country or group of countries consistent with Article 24.05, nevertheless that a Party withdraws from this Agreements, this Agreement shall remain in force for the remaining Parties.

Article 24.07. Authentic Texts

The English, Spanish and Chinese texts of this Agreement are equally authentic. In the event of any discrepancy in the interpretation of this Agreement, the English version shall prevail.

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

DONE, in Taipei City, the Republic of China (Taiwan), in duplicate, in the English, Spanish and Chinese languages, this sixteenth day of June of the year two thousand and six.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHINA (TAIWAN)

HWANG ING-SAN

MINISTER OF ECONOMIC AFFAIRS

FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA

ALEJANDRO ARGUELLO

MINISTER OF DEVELOPMENT, INDUSTRY AND TRADE

Annex II. Schedule of the Republic of Nicaragua

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.03, Investment) Senior Management and Boards of Directors (Article 10.10, Investment)

Description: Investment

The Republic of Nicaragua reserves the right to limit the transfer or disposal of any interest held in an existing state enterprise, such that only a Nicaraguan national may receive such interest. However, the preceding sentence pertains only to the initial transfer or disposal of such interest. The Republic of Nicaragua does not reserve this right with respect to subsequent transfers or disposals of such interest.

The Republic of Nicaragua reserves the right to limit control of any new enterprise created by the transfer or disposal of any interest as described in the preceding paragraph through means other than limitations on the ownership of the interest. The Republic of Nicaragua also reserves the right to adopt or maintain any measure related to the nationality of senior management and members of the board of directors in such new enterprise.

Sector: Minority Affairs and Indigenous Peoples

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services) Most-Favored-Nation Treatment (Articles 10.04, Investment and 11.03, Services) Local Presence (Article 11.06, Services) Performance Requirements (Article 10.09, Investment) Senior Management and Boards of Directors (Article 10.10, Investment)

Description: Cross-Border Services and Investment

The Republic of Nicaragua reserves the right to adopt or maintain any measure granting rights or preferences to socially or economically disadvantaged minorities and indigenous peoples.

Sector: Business services - Legal services

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services) Senior Management and Boards of Directors (Article 10.10, Investment) Local Presence (Article 11.06, Services)

Description: Cross-Border Services and Investment

The Republic of Nicaragua reserves the right to adopt or maintain any measures relating to investment in, or provision of legal services.

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.04, Investment and 11.03, Services)

Description: Cross-Border Services and Investment

The Republic of Nicaragua reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: Communication services - Audiovisual services - Television broadcast transmission services and Radio Broadcast transmission services

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services) Most-Favored-Nation Treatment (Articles 10.04, Investment and 11.03, Services) Local Presence (Article 11.06, Services) Performance Requirements (Article 10.09, Investment) Senior Management and Boards of Directors (Article 10.10, Investment)

Description: Cross-Border Services and Investment

The Republic of Nicaragua reserves the right to adopt or maintain any measure relating to investment in, or the provision of, television and radio broadcast transmission services.

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.04, Investment and 11.03, Services)

Description: Cross-Border Services and Investment

The Republic of Nicaragua reserves, vis-a-vis the Republic of China (Taiwan), the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The Republic of Nicaragua reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international

agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: Coastal Lands, Islands, and River Banks

Obligations Concerned: National Treatment (Article 10.03, Investment)

Description: Investment

The Republic of Nicaragua reserves the right to adopt or maintain any measure with respect to coastal lands, islands, and river banks under the possession of the Republic of Nicaragua.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services) Most-Favored-Nation Treatment (Articles 10.04, Investment and 11.03, Services) Local Presence (Article 11.06, Services) Performance Requirements (Article 10.09, Investment) Senior Management and Boards of Directors (Article 10.10, Investment)

Description: Cross-Border Services and Investment

The Republic of Nicaragua reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Annex I. Schedule of the Republic of China (Taiwan)

Sector: All sectors

Obligations Concerned: National Treatment (Article 10.03)

Measures: Article 17, 18 and 19 of Land Law of October 31, 2001

Description: Investment

Land used for forests reserves, aquaculture, hunting reserves, desalination fields, mineral deposits areas, water resources, military purposes, and land adjacent to the national frontiers shall not be leased to and transferred to foreigners, or used as collateral by the Republic of China (Taiwan) nationals to foreigners.

Nicaragian nationals (natural and legal persons) shall have the same rights to acquire land in the Republic of China (Taiwan) as those accorded under treaties and Nicaragian laws to the Republic of China (Taiwan) nationals acquiring land in the Republic of Nicaragua, provided that such acquisition of land in the Republic of China (Taiwan) by Nicaragian nationals is consistent with the purposes and uses specified in Article 19 of the Republic of China (Taiwan) Land Law and not subject to

the restrictions of Article 17 of the same law.

Sector: Business services - Placement and supply services of personnel

Obligations Concerned: Local Presence (Article 11.06)

Measures: Articles 16 and 17 of Regulations for Authorization and Administration of Private Employment Service Agencies of January 13, 2004

Description: Cross-Border Services

Foreign employment service agencies have to apply for recognition from the competent authorities to refer foreign people to work in the Republic of China (Taiwan), or people living in Hong Kong, Macau, and Mainland China to work in the Republic of China (Taiwan) according to relevant regulations, provided such employment service agencies shall not engage in employment services within the Republic of China (Taiwan).

The competent authorities may authorize foreign employment service agencies to set up commercial presence to provide full employment services in the Republic of China (Taiwan) according to the situation of domestic economy and employment market.

Sector: Business services - Professional services

Obligations Concerned: Market Access (Article 11.05, Services) Local Presence (Article 11.06, Services)

Measures:

CPA certification and taxation services:

Articles 10, 27 and 47 of the Certified Public Accountant Law of May 29, 2002

Article 102 of Income Tax Law of January 15, 2003

CPB bookkeeping and taxation services:

Articles 5, 7, 10, 13,19 and 36 of the Certified Public Bookkeepers Act of June 2, 2004

Architectural services:

Article 34 of Law of Architecture of January 20, 2004

Articles 1, 6 and 54 of Architects Act of June 15, 2005

Professional engineering services:

Paragraph 1 of Article 6 and Article 24 of Professional Engineers Act of June 26, 2002

Article 5, Article 6 and 7 of Act Governing the Administration of Professional Engineering Consulting Firms of July 2, 2003

Veterinary services:

Article 17 of Law Governing Veterinarian of January 30, 2002

Notary services:

Article 24 and 25 of Notary Public Law

Real estate services:

Article 5 and 7 of Real Estate Brokerage Management Act of October 31, 2001

Article 12 of Land Registration Agents Law of October 24, 2001

Article 9 of Real Estate Appraiser Law of December 11, 2002

Description: Cross-Border Services

To practice CPA certification services and taxation services, CPB bookkeeping and taxation services, architectural services, professional engineering services, veterinary services, notary and real estate professional services, local presence is required, and no corporation type of commercial presence is allowed except for real estate broking services and

professional engineering services, where professional engineering consulting firm is applicable.

Sector: Fisheries and Aquaculture

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services)

Measures: Article 5 of the Fisheries Law of December 18, 2002

Description: Cross-Border Services and Investment

Only citizens of the Republic of China (Taiwan) shall be qualified as fishery persons (including those engaging in aquaculture business) hereunder unless the particular foreigner has obtained the approval of the competent authority to operate fishery in cooperation with the fishermen of the Republic of China (Taiwan).

Sector: Agriculture, animal husbandry, forestry and loggings

Obligations Concerned: National Treatment (Article 10.03, Investment)

Measures: Article 7 of the Statute for Investment by Foreign Nationals of November 19, 1997

Negative List for Investment by Overseas Chinese and Foreign Nationals of May 13, 2004

Description: Investment

Foreign investment is not allowed in forestry and loggings industries.

The agriculture and animal husbandry industries in which foreign investment is restricted are:

(1) Agriculture: production on paddy rice, dryland food crops, special crops, vegetables, fruits, mushrooms, sugar-cane, flowers and other agricultural and horticultural products;

(2) Animal husbandry: raising of cattle, hogs, chickens, ducks and other animal husbandry.

Sector: Public utilities

Obligations Concerned: National Treatment (Article 10.03, Investment)

Measures: Article 16 of the Statute for Regulating Privately-owned Utilities of April 26, 2000

Description: Investment

Privately-owned utilities companies shall not have foreign stockholders or mortgage their property to foreigners for funds unless having been approved by the Executive Yuan.

Sector: Water

Obligations Concerned: National Treatment (Article 10.03, Investment)

Measures: Article 15 and 42 of the Water Act of February 6, 2003

Description: Investment

Foreigners are not allowed to acquire water rights; provided that this shall not apply to the case, which is granted by the Executive Yuan upon request by the competent authorities.

The following waters are exempt from water rights registration:

1. domestic use and livestock water consumption;

2. pond digging on private land;

3. well drilled on private land, provided that its water output yield is less than 100 liters per minute;

4. water drawn by means of human power, animal power, or other simple means.

The competent authorities may impose restrictions upon, or order a registration of, the exempted use of the above waters if such use has interfered with public water business or benefits from water use of others.

Sector: Communications-Telecommunication services

Obligation Concerned: National Treatment (Article 10.03, Investment) Senior Management and Boards of Directors (Article 10.10, Investment) Market Access (Article 11.05, Services) Local Presence (Article 11.06, Services)

Measures: Article 12 of Telecommunications Act of May 21, 2003

Article 5 of Satellite Communications Services Regulations of September 24, 2003

Description: Investment

The chairman of the Board, of a Type I telecommunications enterprise shall be a national of the Republic of China (Taiwan).

A Type I Telecommunications enterprise refers to an enterprise that installs telecommunications machinery and line facilities to provide telecommunications services. The above facilities refer to network transmission facilities connecting the sending and receiving terminals, switching facilities installed as part of the network transmission facilities and the auxiliary facilities thereof.

For the Type I Telecommunications enterprise, the total direct shareholding by foreigners may not exceed forty-nine percent, and the sum of direct and indirect shareholding by foreigners may not exceed sixty percent.

The percentage of indirect shareholding by foreigners shall be calculated by multiplying the percentage of shareholding by domestic juristic persons in the Type | telecommunications enterprise by the percentage of shareholding or capital paid by foreigners in the said domestic juristic persons.

The percentage of shareholding by foreigners in Chunghwa Telecom Co., Lid. cannot exceed twenty percent.

Cross-Border Trade in Services

The foreign Mobile Satellite Service (MSS) operators shall enter into a cooperation contract with a domestic operator of Satellite Communication Services or International Network Business of Fixed Network Telecommunications Services, while the domestic agent shall represent to promoting the MSS in the country.

The domestic operator of Satellite Communication Services or International Network Business of Fixed Network Telecommunications Services who represents foreign MSS operators promoting MSS in accordance with the provision of the preceding paragraph shall submit the related documentation and report to the MOTC (Ministry of Transportation and Communication) for approval. The domestic operator of Satellite Communication Services or International Network Business of Fixed Network Telecommunications Services shall manage the official payment such as operation franchise fee, charges of frequency usage and other statutory obligations accordance to Laws.

The domestic operator of Satellite Communication Services or International Network Business of Fixed Network Telecommunications Services prior to obtaining MOTC's approval shall not represent foreign MSS operators in promoting the business.

The domestic operator of Satellite Communication services or International Network Business of Fixed Network Telecommunications Services who represents foreign MSS operators to promote services in the country shall together with foreign MSS operators make a service contract with users and shoulder contract obligations.

Sector: Communication services - Radio and television

Obligations Concerned: National Treatment (Article 10.03, Investment) Performance Requirements (Article 10.09, Investment) Senior Management and Boards of Directors (Article 10.10, Investment) Local Presence (Article 11.06, Services)

Measures: Articles 5 and 19 of Broadcasting and Television Act of December 24, 2003

Articles 19, 20 and 43 of Cable Radio and Television Law of December 24, 2003

Articles 10 and 15 of Satellite Broadcasting Act of December 24, 2003

Description: Investment

1. Foreign capital restriction:

(1) Foreign investment in radio broadcasting and television stations is not allowed.

(2) Foreign investment in cable radio and television systems shall be less than the following thresholds:

-total shares directly held by foreign shareholders: 20%

-total direct and indirect foreign investment: 60%

(3) Foreign investment in satellite broadcasting business shall be less than 50% of total shares issued.

2. Domestically-produced programs shall not be less than the following thresholds:

-Wireless radio and television: 70%

-Cable radio and television: 20%

The above-mentioned percentages shall be calculated on the basis of the total number of hours of program transmission on the activated channels of a system operator.

3. The chairman and at least 2/3 of the board of directors and supervisors of a company operating a cable radio and/or television system shall be the Republic of China (Taiwan) nationals.

Cross-Border Services

A foreign satellite broadcasting business that engages in service operations in the Republic of China (Taiwan) shall establish a branch office in the Republic of China (Taiwan). A foreign satellite broadcasting business that engages in program supply operations in the Republic of China (Taiwan) shall set up a branch office or agent in the Republic of China (Taiwan).

Sector: Education services

Obligations Concerned: National Treatment (Article 10.03, Investment) Senior Management and Boards of Directors (Article 10.10, Investment)

Measures: Article 15 and 78 of Private School Law of February 6, 2003

Description: Investment

Foreign investment is not allowed in primary schools and junior high schools.

The chairman and at least 2/3 of the board of trustees, and the president/principal of the institution providing senior high school education, higher education, and adult education should be the Republic of China (Taiwan) nationals.

Sector: Health related and social services - Hospital services

Obligations Concerned: Senior Management and Boards of Directors (Article 10.10, Investment) Market Access (Article 11.05, Services)

Measures: Article 4 and 31 of Medical Law of April 28, 2004

Description: Cross-Border Services and Investment

A hospital should be established only by a non-profit institution, and at least 2/3 of the board of trustees should be the Republic of China (Taiwan) nationals.

Sector: Tourism and travel related services - Tourist guides services

Obligations Concerned: Market Access (Article 11.05, Services)

Measures: Article 32 of the Law on the Development of Tourism of June 11, 2003

Description: Cross-Border Services

Tourist guides cannot provide services without being employed by travel agencies and tour operators, or temporarily employed by government agencies in order to provide services.

Sector: Transport services - Internal waterway transport, cabotage, and pilotage

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services) Senior Management and Boards of Directors (Article 10.10, Investment)

Measures: Article 4 of Shipping Law of January 30, 2002

Article 13 of Pilotage Law of January 30, 2002

Articles 2 and 5 of the Law of Ships of January 30, 2002

Description: Investment

Foreign investment in a company providing the above services shall not exceed the following thresholds:

- Zero percent for unlimited companies;

- 1/3 of the equity for a limited company or a company limited by shares.

The representative director/chairman and at least 2/3 of the board of directors of the company shall be the Republic of China (Taiwan) nationals.

Cross-Border Services

Any non-Republic of China (Taiwan) vessel may not navigate between the Republic of China (Taiwan) ports to transport passengers and cargos unless a franchise is granted.

No person shall be registered as a pilot if he/she loses the Republic of China (Taiwan) nationality.

Unless otherwise specially approved by the Republic of China (Taiwan) government or for seeking shelter, any non-Republic of China (Taiwan) flag ship shall not stay in any harbor or port other than those announced by the Republic of China (Taiwan) government as international port.

Sector: Transport services - International maritime transport services

Obligations Concerned: National Treatment (Article 10.03, Investment) Senior Management and Boards of Directors (Article 10.10, Investment)

Measures: Article 2 of the Law of Ships of January 30, 2002

Description: Investment

Foreign investment in a company providing the above services shall not exceed the following thresholds:

- Zero percent for unlimited companies;

- 1/2 of the equity for a limited company or a company limited by shares.

The representative director of the limited company shall be the Republic of China (Taiwan) nationals. The chairman and at least 1/2 of the board of directors of the company limited by shares shall be the Republic of China (Taiwan) nationals.

Sector: Transport services - Road transport services

Obligations Concerned: National Treatment (Article 10.03, Investment)

Measures: Article 35 of Highway Law of July 2, 2003

Description: Investment

Foreigners or unincorporated legal entities of the Republic of China (Taiwan) may not invest in automobile transportation providers within the boundaries of the Republic of China (Taiwan), but those approved by the central highway authority may apply to invest in car rental transportation services and freight transportation services.

Sector: Transport services - Air transport services

General aviation services: business engaging in aerial tourism, survey, photographing, fire-fighting and searching, paramedic, hauling and lifting, spraying and dusting, as well as those authorized and other than air transport of passengers, cargo and mail flight operations for compensation or hire.

Airport ground handling services Catering services

Obligations Concerned: National Treatment (Articles 10.03, Investment and 11.02, Services) Senior Management and Boards of Directors (Article 10.10, Investment)

Measures: Article 49, 65 8referring to 49), 74-1, 77 (referring to 74-1) and 81 of Civil Aviation Law of June 9, 2004

Description: Investment

Foreign investment in a Civil Air Transport Enterprises or a specialty air service company shall not exceed the following thresholds:

- Zero percent for an unlimited company;

- 1/3 of the equity for a limited company or company limited by shares.

The chairman/representative director, and at least 2/3 of the board of directors of a limited company or a company limited by shares providing the above services shall be the Republic of China (Taiwan) nationals.

Foreign investment in an airport ground handling services or a catering service company shall not exceed the following thresholds:

- Zero percent for an unlimited company;

- 1/2 of the equity for a limited company or company limited by shares.

The chairman/representative director, and at least 1/2 of the board of directors of a limited company or a company limited by shares providing the above services shall be the Republic of China (Taiwan) nationals.

Cross-Border Service

Only the Republic of China (Taiwan) aircrafts are allowed to provide general domestic aviation services.

Sector: Transport services - Airfield management and operation

Obligations Concerned: National Treatment (Article 10.03, Investment)

Measures: Article 10 and 29 of Civil Aviation Law of June 9, 2004

Description: Investment

The airfield may be established by legal persons in which foreign investment shall not exceed the following thresholds:

- Zero percent for an unlimited company;

- 1/3 of the equity for a limited company or company limited by shares.

The chairman/representative director, and at least 2/3 of the board of directors of a limited company or a company limited by shares providing the above services shall be the Republic of China (Taiwan) nationals. And the managers and operators of the airfield shall be the Republic of China (Taiwan) nationals.

Sector: Transport services - Air transport auxiliary services

Obligations Concerned: National Treatment (Article 11.02, Services)

Measures: Article 24 of Civil Aviation Law of June 9, 2004

Description: Cross-Border Services

The aircraft pilot and other aeronautical technical personnel, such as flight mechanic, ground mechanic, air traffic controller, technicians employed by an aircraft maintenance facility and aircraft dispatcher shall be the Republic of China (Taiwan) nationals, unless exclusively permitted by Ministry of Transportation and Communication (MOTC) in accordance with relevant regulations.

Sector: Mining

Obligations Concerned: National Treatment (Article 10.03, Investment)

Measures: Article 2 and 6 of Mining Law of December 31, 2003 Investment

Description: Mining concessions are granted only to the natural or legal persons of the Republic of China (Taiwan).

Sector: Postal and courier services

Obligations Concerned: Market Access (Article 11.05, Services)

Measures: Article 6 of the Postal Law of July 10, 2002

Description: Cross-Border Services

Business of forwarding letters, postal cards or other papers having the nature of correspondence is reserved to the Chunghwa Post Company Limited.

Sector: Water supply

Obligations Concerned: Market Access (Article 11.05, Services)

Measures: Article 7 of Water Supply Act of May 23, 2005

Description: Cross-Border Services

Business of water supply is reserved to the Taiwan Water Corporation and Taipei Water Department.

Sector: Airport operation and management

Obligations Concerned: Market Access (Article 11.05, Services)

Measures: Article 28 of Civil Aviation Law of June 9, 2004

Description: Cross-Border Services

According to the Civil Aviation Law, only state, county and city governments allowed to establish and operate airports, including the air traffic control services.

Sector: Public Welfare Lottery

Obligations Concerned: National Treatment (Article 11.02, Services) Market Access (Article 11.05, Services)

Measures: Article 4 of Public Welfare Lottery Issue Act of June 28, 1999

Description: Cross-Border Services

The Issuing Institute of the Public Welfare Lottery shall be appointed by the Competent Authority.