

# **Treaty on investment and trade in services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua**

The Government of the Republic of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua,

Determined to:

To achieve a better balance in their trade relationship;

Promote an expanded and secure market for investments and exchange of services in their territories;

Increasing the competitiveness of the services sector, a sine qua non for the facilitation of trade in goods and the flow of capital and technology, contribute decisively to strengthen the competitiveness of the Parties;

Establish a legal system with clear rules, transparent and mutually beneficial for the promotion and protection of investments, as well as for trade in services;

Respecting their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) Agreement, as well as other bilateral and multilateral instruments of cooperation and integration;

Creating job opportunities and improving the living standards of their respective countries; and

Promoting the active participation of the various economic operators, in particular of the business sector in efforts to deepen their economic relations;

Have signed this treaty on investment and trade in services

## **Part I. Initial Provisions**

1. The main objectives of this Treaty is as follows:

a) Establish a legal framework for the liberalization of trade in services and investment between the parties, in accordance with the Central American Economic Integration, the General Agreement on Trade in Services (GATS) which is part of the WTO Agreement, as well as other bilateral and multilateral instruments of integration and cooperation.

This framework will promote the interests of the Parties, on the basis of mutual benefit and the achievement of an overall balance of rights and obligations between the parties;

b) Encourage expansion and diversification of trade in services and investment between the parties;

c) To facilitate the movement of services between the parties;

d) To promote, protect and substantially increase investment in each party; and

e) Create effective procedures for the implementation and application of this Treaty, for its joint administration and for the resolution of disputes between an investor and a party of the other party.

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

3. The parties, with the aim of achieving greater integration between them, shall in accordance with article 9.02, begin negotiations to define a future programme of work relating to investment and trade in services.

## **Article 102. Observance of the Treaty**

Each Party shall ensure, in accordance with its constitutional rules, the implementation of the provisions of this treaty in their respective territories.

1. The Parties confirm their rights and obligations existing between them in accordance with the treaties to which they are party.

2. In the event of any inconsistency between the provisions of the treaties referred to in the preceding paragraph and the provisions of this Treaty, the latter shall prevail to the extent of the inconsistency.

## **Article 104. Succession of Treaties**

Any reference to another treaty shall be made on the same terms for a successor agreement to which the parties are party.

## **Chapter 2. Definitions of General Application**

### **Article 201. Definitions of General Application**

For purposes of this Treaty, unless otherwise specified:

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

GATS means the General Agreement on Trade in Services, that form part of the WTO agreement; Committee means the Committee established pursuant to article 9.02;

Council: the Council of Ministers of Economic Integration established by article 37 of protocol of Guatemala;

Calendar days means calendar days; or

Enterprise means any legal person constituted or organized under the applicable law of a party, whether or not for profit and whether private or government owned, including foundations, companies, trusts, shares, firms, sole proprietorship enterprise co-investments or other associations;

Enterprise of a party constituted means an enterprise or organized under the law of a Party and a branch of an enterprise located in the territory of the other party that performs business activities in the same;

State enterprise means an enterprise owned by a party or under the control of the same through ownership rights;

Existing means in effect on the date of Entry into Force of this Treaty;

Measure means any law, regulation, rule, procedure, provision or practice, among others; goods, means any material or product part;

National means a natural or natural person who has the nationality of a Party according to its legislation and permanent residents who shall enjoy the benefits, rights and obligations that this treaty accorded to nationals, only in relation to the implementation of the Treaty;

Means any State Party which has entered into force this Treaty;

National means a person or an enterprise; and

Territory means the territory of each party.

## **Part II. Provisions Relating to Investment, Services and Related Matters**

### **Chapter 3. Investment**

#### **Section A. Investment**

##### **Article 301. Definitions**

For purposes of this chapter:

ICSID means the International Centre for Settlement of Investment Disputes;

Inter-American Convention: the Inter-American Convention on International Commercial Arbitration, held in Panama; 30 January 1975

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, D.

C. On 18 March 1965;

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

Application: the claim submitted by an investor litigants against a Party under the terms of section B of this chapter, is an alleged breach of the provisions of section A of this chapter;

"enterprise means an enterprise as defined in article 2.01, and a branch of an enterprise;

Investment means every kind of assets or rights of any kind, acquired or used for the purpose of obtaining an economic benefit or other business purposes, with resources transferred or acquired by an investor reinvested and includes:

a) A company, shares of a company or interests in the capital of an enterprise that allow the owner to participate in its income or profits.

Debt instruments of an enterprise and loans to an enterprise where:

i) The enterprise is an affiliate of the investor, or

ii) The original maturity of the debt instrument or loan is at least three (3) years;

b) An interest in an enterprise that grants to the owner the right to participate in the assets of that enterprise in liquidation, provided that it does not result in a debt instrument or a loan excluded under subparagraph (a);

c) Real estate or other property, tangible or intangible rights, including in the field of intellectual property as well as any other proprietary right (such as mortgages, pledge, usufruct and similar rights), acquired with the expectation of used or with the purpose of obtaining an economic benefit or other business purposes; and

d) Participation or benefit resulting of capital or other resources committed for the development of an economic activity in the territory of a party, inter alia, under:

i) Contracts involving the presence of an investor property in the territory of the party, including concessions and contracts for construction and turnkey; or

ii) Contracts where remuneration depends substantially on the production, income or profits of an enterprise;

But investment does not mean,

1. A payment obligation or a credit granted to the State or a state enterprise;

2. Monetary claims derived exclusively from:

i) Commercial contracts for the sale of goods or services by a national or enterprise in the territory of a party to an enterprise in the territory of the other party; or

ii) The granting of credit in connection with a commercial transaction, the expiry date is less than three (3) years, such as trade financing; except a loan covered by the provisions of a loan to an enterprise as defined in subparagraph (a); or

3. Any other monetary claim that does not involve the kinds of interests set out in subparagraphs (a) to (d);

Investment of an investor Party a means of an investment owned or controlled directly or indirectly by an investor of a Party in the territory of the other party.

In case of a company, an investment is owned by an investor if the investor of a Party has an ownership of more than 50% of their equity capital.

An investment is controlled by an investor of a party if the investor has the power to:

i) Designate a majority of its directors or

ii) Conduct of any such operations;

An investor of a Party means a Party or a company of the same or a national of that Party or an enterprise who carry out acts materials designed to make an investment or conduct or has made an investment in the territory of the other party. The intention to make an investment may occur, inter alia, through legal acts aimed at achieving the investment, or are in the process of committing the financial resources required therefor;

Investors of a non-: an investor Party that is not an investor of a Party that seeks to perform or performs or has made an investment;

Investor combatant: an investor that makes a claim under section B of this chapter;

Opposing side: the party against which a claim is submitted under the terms of section B of this chapter;

The opposing side: investor combatant or the opposing side; contending parties: the investor combatant and the opposing side;

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted by the United Nations General Assembly on 15 December 1976;

Secretary-General means the Secretary-General of ICSID;

Transfers means transfers and international payments;

A tribunal means an arbitration tribunal established under article 3.22; and

Court of cumulation: an arbitral tribunal established under article 3.29.

## **Article 302. Scope and Extent of Obligations**

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

- a) Investors of another party in all matters relating to their investment;
- b) Investments of investors of another party in the territory of the Party; and
- c) As regards article 0307, all investments in the territory of the party.

2. This chapter does not apply to:

- a) Economic activities reserved for each Party, as set out in annex II;
- b) Measures adopted or maintained by a Party relating to Financial Services;
- c) The measures taken by a party to restrict the participation of investments of investors of another party in its territory for reasons of national security or public order; and
- d) Disputes or claims arising prior to the Entry into Force of this Treaty, or related events which occurred prior to its entry into force, even if their effects are still thereafter.

3. This chapter applies across the territory of the Parties and at any level of Government, despite the inconsistent measures that may exist in their respective laws.

4. Nothing in this chapter shall be construed as preventing a party from providing services or perform functions related to the implementation of laws, services of social rehabilitation, pension or unemployment insurance or social security services, social welfare, education, health and the protection of children.

## **Article 303. Minimum Standard of Treatment**

Each Party shall accord to investors of another party investments and their treatment in accordance with international law, including fair and equitable treatment and legal protection and security within its territory.

## **Article 304. National Treatment**

Each Party shall accord to investors of another party and to an investor of investments of the other party treatment no less favourable than that accorded in like circumstances to its own to investors and investments of such investors with respect to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of investments.

### **Article 305. Most Favoured Nation Treatment**

Each Party shall accord to investors of another party and to an investor of investments of the other party treatment no less favourable than that accorded in like circumstances to investments of investors and to an investor of any other party or of a non-party with respect to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of investments.

### **Article 306. Treatment In Case of Loss**

Each Party shall accord to investors of the other party, in respect of investments in its territory who suffer losses due to armed conflict or civil strife, force majeure or unforeseeable circumstances, non-discriminatory treatment with respect to any measure that it adopts or maintains in connection with such losses.

### **Article 307. Performance Requirements**

1. No party may impose or enforce compliance with commitments under the following requirements or the establishment, acquisition, expansion, conduct, administration or operation of an investment of an investor of a Party on its territory to:

- a) Such export a given level or percentage of goods or services;
- b) To achieve a given level or percentage of domestic content;
- c) To purchase or use a accord preference to produced goods or services provided in its territory or to purchase goods producers or from providers of services in its territory;
- d) In any way relate to 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) In its territory to restrict sales of goods or services that such investment produces or provides such sales by relating in any way to the volume or value of its exports or to generate foreign exchange earnings;
- f) Transfer to a person in its territory, technology, knowledge production process or other reserved except when the requirement is imposed by a judicial or administrative tribunal or competent authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this treaty; or
- g) To act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

This paragraph does not apply to any requirement other than those specified therein.

2. A measure that requires an investment to use a technology to meet requirements of health or safety of general application shall not be considered inconsistent with paragraph 1 verbatim

f) For greater certainty, articles 3.04 and 3.05 on single stream comprehensive apply to the measure.

3. No party may condition the receipt of an advantage or which shall continue to receive the same in connection with an investment in its territory by an investor of a Party on compliance with any of the following requirements:

- a) To purchase or use a accord preference to goods produced in its territory or to purchase goods from producers in its territory;
- b) To achieve a given level or percentage of domestic content;
- c) In any way relate to 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) In its territory to restrict sales of goods or services that such investment produces or provides such sales by relating in any way to the volume or value of its exports or foreign exchange earnings which generate.

This paragraph does not apply to any requirement other than those specified therein.

4. Nothing in paragraph 3 shall be construed as preventing a party, in its territory, imposed in connection with an investment of an investor of the other party, legally established requirements of: geographical location of production units, or training, employment generation or activities in the area of research and development.

5. Provided that such measures are not applied in an arbitrary or unjustified or do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1 (b) or (c) or 2 (a) or (b) shall be construed to prevent a Party from adopting or maintaining environmental nature, including measures necessary to:

- a) To ensure compliance with laws and regulations that are not inconsistent with the provisions of this Treaty;
- b) Protect human life or health, animal or plant; or
- c) Preservation of non-renewable natural resources, living or not.

6. In the event that a party, the imposition by the other party of any other requirements under paragraph 1 do not adversely affect the flow of trade or constitutes a significant barrier to investment, the matter shall be considered by the Committee on investment and cross-border trade in services, established in article 4.09.

7. If the Committee considers that the requirement in question adversely affects the trade or constitutes a significant barrier to investment, the Commission recommend to the provisions necessary to eliminate the practice in question. The Parties shall consider these provisions as incorporated into this Treaty.

## **Article 308. Senior Management and Boards of Directors**

1. No party may require that an enterprise of that Party appoint individuals of any particular nationality to senior management positions.

2. A Party may require that a majority of the members of the governing bodies or any committee of such bodies of an enterprise of that Party that is an investment of an investor of the other party 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 309. Reservations and Exceptions**

1. Articles 3.04, 3.05 on single stream comprehensive 0307 3.08 and do not apply to:

- a) Any existing measure inconsistent to maintain a Party, provided that the same forms part of its list of Annex I inconsistent measures (existing) or Annex II (economic activities reserved for each party);
- b) The continuation or prompt renewal of any measure inconsistent referred to in subparagraph (a); or
- c) The reform to any inconsistent measure referred to in subparagraph (a), provided that the amendment does not decrease the level of conformity of the measure as it was in force before the reform, with articles 3.04 3.05 on single stream comprehensive 0307 and 3.08.

2. The treatment accorded by a Party pursuant to article 3.05 on single stream comprehensive does not apply to treaties or sectors set out in its schedule to Annex III (exceptions from most-favoured-nation treatment).

3. Articles 3.04, 3.05 on single stream comprehensive 3.08 and do not apply to:

- a) Procurement by a party or a state enterprise; or
- b) Subsidies or inputs, including government loans and insurance guarantees granted by a party or a state enterprise, except as provided in article 3.06.

4. With a view to achieving a progressively higher level of liberalisation, the parties undertake to conduct future negotiations, at least every two (2) years, within the Council, aimed at eliminating remaining restrictions registered in accordance with paragraph 1 of this article.

## **Article 310. Transfers**

1. Each Party shall permit all transfers relating to an investment of an investor of the other party into its territory be made freely and without delay. Such transfers include:

- a) Profits, dividends, interests, capital gains, royalties payments, administration, technical assistance and other fees; returns and other amounts in kind derived from the investment;
  - b) Products derived from the sale or the total or partial liquidation of the investment;
  - c) Payments made under a contract of which is a party to an investor or investment including its payments made pursuant to a loan agreement;
  - d) Resulting payments of compensation for expropriation; and
  - e) Payments arising out of the implementation of the provisions on dispute settlement contained in section B of this chapter.
2. For purposes of this chapter, a transfer is made without delay when it has been made within the period normally necessary for the completion of the formalities of transfer.
3. No party may require its investors to transfers carried out their income, profits, or other profits or amounts derived from or attributable to investments in the territory of another party, nor shall in no case the transfer.
4. Each Party shall permit transfers to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.
5. Notwithstanding paragraphs 1 and 4, each party may prevent a transfer through the equitable and non-discriminatory application in good faith of measures:
- a) In order to protect the rights of creditors;
  - b) Relating to ensure compliance with laws and regulations:
    - i) For the issuance, transfer and securities and futures and derivatives; or
    - ii) Concerning reports or records of transfers; or
  - c) In connection with criminal offences or judgments in judicial or administrative proceedings.
6. Notwithstanding the provisions of this article, each party may establish temporary controls on currency transactions, provided that the balance of payments of the Party concerned, present a serious imbalance or exceptional difficulties or serious and incorporate a programme in accordance with internationally accepted standards.

## **Article 311. Expropriation and Compensation**

1. No party may expropriate or nationalize directly or indirectly an investment of an investor of a party in its territory or take any measure equivalent to expropriation or nationalization of such investment, unless:
- a) For a public purpose in accordance with annex 3.11;
  - b) On a non-discriminatory basis;
  - c) In accordance with due process of law; and
  - d) On payment of compensation in accordance with paragraphs 2 to 4.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (date of expropriation), and shall not reflect any change in value occurring because the intended expropriation had been known prior to the date of expropriation. Valuation criteria shall include tax declared going concern value of tangible property as well as other criteria that are relevant to determine fair market value.
3. The compensation shall be paid without delay and shall be fully realized.
4. The amount paid shall be no less than the amount of compensation to be paid in a freely convertible currency at the international financial market, on the date of expropriation and this had been converted at the currency market rate of exchange prevailing on the date of valuation, plus the interest generated a bank or commercial rate until the date of payment.

## **Article 312. Special Formalities and Information Requirements**

1. Nothing in Article 3.04 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities connected with the establishment of investments by investors of the other party, such as that investments be constituted under the law of the Party provided that such formalities do not materially impair the protections afforded by a Party pursuant to this chapter.

2. Notwithstanding articles 3.04 and 3.05 on single stream comprehensive each party may require, in its territory of an investor of the other party to provide routine information concerning its informational investments or solely for statistical purposes. The such Party shall protect any confidential information that is from that disclosure would prejudice the competitive position of the investor or the investment.

### **Article 313. Relationship to other Chapters**

In the event of incompatibility between any provision of this chapter and the provisions of another chapter of this treaty the provisions of the latter shall prevail to the extent of the inconsistency.

### **Article 314. Denial of Benefits**

A Party, subject to prior notification and consultation with the other Party may deny the benefits of this chapter to an investor of that Party that is an enterprise of the same and to investments of investors of such investor if a non-party own or control the majority and the enterprise has no substantial business activities in the territory of the party under whose law it is constituted or organized.

### **Article 315. Extraterritorial Application of the Legislation of a Party**

1. The parties, in relation to investments of investors constituted its, or organized under the law of the other party may not exercise jurisdiction, or take any measure which would cause the extraterritorial application of its laws or blocking of trade between the parties, or between a party and a non- party.

2. If any of the Parties to fulfil the provisions of paragraph 1, the Party where the investment is incorporated may, at its discretion, take the measures and bring an action that it considers necessary in order to rescind legislation or the measure concerned and barriers to trade resulting therefrom.

### **Article 316. Measures Related to the Environment**

1. Nothing in this chapter shall be construed as preventing a party from maintaining or implement any measure consistent with this chapter that it considers appropriate to ensure that investment activity in its territory observe environmental legislation.

2. The Parties recognize that it is inappropriate to encourage domestic investment by relaxing measures applicable to the health, safety or relating to the environment. Accordingly, no party shall commit to eliminate or exempt from the application of such measures of an investor to investment, as a means to induce the establishment, acquisition, expansion or retention of an investment in its territory. If a Party considers that another Party has fostered an investment in such a manner, it may request consultations with the other party.

### **Article 317. Investment Promotion and Exchange of Information**

1. With the intention to significantly increase the participation of reciprocal investments, the Parties shall promote and support the development of documents for the promotion of investment opportunities and the development of mechanisms for dissemination. The Parties may establish, maintain and enhance financial mechanisms for investments of a Party in the territory of the other party.

2. The Parties shall make available information on available opportunities for:

a) Investment in its territory, which may be developed by investors of the other party;

b) Strategic alliances between investors of the Parties through research and convergence of interests and partnership opportunities; and

c) Investments in specific economic sectors which are of interest to the parties and to their investors, according to the application is made by any party.



3. In order to remain informed and updated, the Parties shall exchange information on:

- a) The legislation which directly or indirectly affect foreign investment including, inter alia, exchange rate regimes and of a fiscal nature;
- b) The conduct of foreign investment in their respective territories; and
- c) Investment opportunities referred to in paragraph 2 of this article, including the dissemination of financial instruments available to contribute to the expansion of the investment in the territory of the Parties.

This section provides a mechanism for the settlement of disputes of a legal nature investment arising from the Entry into Force Treaty, as a result of the breach of an obligation under section A of this chapter and ensuring the equal treatment between investors of the Parties in accordance with the principle of reciprocity, as the proper performance of the security and defence within a legal proceedings before an arbitral tribunal.

### **Article 319. Demand of the Investor of a Party on Its Own Behalf or on Behalf of an Enterprise**

1. In accordance with this section, the investor of a Party may, on their own account or on behalf of an enterprise of the other Party that is owned or controlled, directly or indirectly, to submit a claim arbitration founded on the other party or an enterprise controlled directly or indirectly by that party has breached an obligation under this chapter, if the investor or its investment has suffered losses or damages under the violation or as a result of it.
2. An investor may not make a claim under this section if more than three (3) years from the date on which it had knowledge or should have had knowledge of the alleged breach of his investment as well as the loss or damage.
3. Where an investor submits a claim on behalf of an enterprise that is owned or controlled, directly or indirectly, or parallel an investor that does not have control of an undertaking to submit a claim for own account as a result of the same events that gave rise to the submission of a claim under this article (2), and two or more claims submitted to arbitration under article 3.22 cumulation, the Tribunal established in accordance with article 3.29 shall jointly such claims, unless the Tribunal finds that the interests of a party litigants.
4. An investment may not submit a claim to arbitration under this section.

### **Article 320. Dispute Resolution Through Consultations and Negotiations**

The parties to the conflict first attempt to resolve the dispute through negotiation or consultation.

### **Article 321. Notification of Its Intention to Submit the Claim to Arbitration**

The Investor combatant shall notify in writing the opposing side of its intention to submit a claim to arbitration at least ninety (90) days before the claim is formally submitted. The notice shall specify:

- a) The name and address of the investor combatant and, when the claim is submitted on behalf of an enterprise), the name and address of the enterprise;
- b) The facts relied upon demand;
- c) The provisions of this chapter alleged to have been breached and any other relevant provisions; and
- d) The relief sought and the approximate amount of damages claimed in the currency in which the investment has been made.

### **Article 322. Submission of a Claim to Arbitration**

1. Except as provided in annex 3.22 and paragraph 3 of this article and provided that six (6) months since the events giving rise to the claim, an investor litigants may submit the claim to arbitration under:
  - a) The ICSID Convention provided that both the opposing side as the party of the investor are parties to the Convention;
  - b) The ICSID Additional Facility Rules, when the opposing side or the party of the investor, but not both, is a party to the ICSID Convention; or

c) The UNCITRAL Arbitration Rules.

2. The selected arbitration rules, shall govern the arbitration except to the extent modified by this section.

3. A claim by an investor of a party:

a) Self-employment may be submitted to arbitration under this section, provided that both the investor and the enterprise that is a juridical person that is owned or

Controlled, directly or indirectly, have not submitted the same claim to a court of competent national of the opposing side;

b) On behalf of an enterprise may be submitted to arbitration under this section, provided that both the investor and the enterprise that is a juridical person that is owned or controlled, directly or indirectly, have not submitted the same claim to a court of competent national of the opposing side;

Accordingly, once the investor or the enterprise has submitted a claim to the Tribunal

The competent national of the opposing side, the choice of the procedure shall be final and only

Excluding the possibility of submitting the claim to arbitration under this

Section.

### **Article 323. Conditions Precedent to Submission of a Claim to Arbitration Proceedings**

1. The consent of the Parties to the conflict to arbitration under this Chapter shall be regarded as consent to such arbitration to the exclusion of any other mechanism.

2. Each Party may require the exhaustion of local administrative remedies as a condition of its consent to arbitration under this chapter. However, if within six (6) months from the date on which they were administrative remedies for administrative authorities have not delivered its final decision, the investor may submit to arbitration under this section.

3. An investor combatant self-employed may submit a claim to arbitration under this section only if:

a) Consent to arbitration in accordance with the procedures set out in this section; and

b) The investor and where the claim is for loss or damage to an interest in an enterprise of the other party that the investor owns or controls directly or indirectly, the enterprise waive their right to initiate any proceedings before a competent national court under the law of the opposing side or other dispute settlement procedures with respect to the measure of the opposing side alleged breach of the provisions referred to in article 3.19 except procedures requesting the application of precautionary measures of suspensive effect, declaratory or special, not involving the payment of damages before the competent national court, according to the Law of the opposing side, such as the exhaustion of local administrative remedies before the authorities responsible for implementing the measure alleged violation, as specified in the legislation of the opposing side.

4. An investor litigants, on behalf of an enterprise) may submit a claim to arbitration under this section only if both the investor and the Enterprise:

a) Consent to arbitration in accordance with the procedures set out in this section; and

b) Waive their right to initiate any proceedings with respect to the measure of the opposing side alleged to be a breach referred to in article 3.19 before any competent national court under the law or the law of a party or other dispute settlement procedures, except procedures requesting the application of precautionary measures of suspensive effect, declaratory or special, not involving the payment of damages before the competent national court pursuant to legislation or right of the opposing side, such as the exhaustion of local administrative remedies before the authorities responsible for implementing the measure alleged violation, as specified in the legislation of the opposing side.

5. The consent and waiver required by this article would result in writing, shall be delivered to the opposing side and included in the submission of a claim to arbitration.

6. In the event that the opposing side litigant has deprived the investor of control of an enterprise:

a) There shall be a waiver from the enterprise under subparagraphs (b), paragraphs 3 and 4; or

b) It shall not apply article 3 of paragraph 3.22.

## **Article 324. Consent to Arbitration**

1. Each party consents to submit claims to arbitration in accordance with the procedures and requirements set out in this section.
2. The submission of a claim to arbitration by an investor combatant shall comply with the requirements set out in:
  - a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the Parties;
  - b) Article II of the New York Convention for an agreement in writing; or
  - c) Article I of the Inter-American Convention, which requires an agreement.

## **Article 325. Number and Method of Appointment of Arbitrators**

Except as provided for in article 3.29, and without prejudice to the warring parties agree otherwise, the Tribunal shall be composed of three arbitrators (3). Each of the Parties involved shall appoint an arbitrator. The third arbitrator who shall be the Chairman of the Tribunal shall be appointed by mutual agreement of the Parties to the conflict but shall not be a national of one of the parties involved.

## **Article 326. Integration of the Tribunal In the Event That a Party Fails to Appoint an Arbitrator or Litigant Does Not Reach an Agreement on the Designation of the Chairman of the Tribunal**

In the event that a Party fails to appoint an arbitrator or litigant does not reach an agreement on the designation of the Chairman of the Tribunal

- a) The Secretary-General shall appoint the arbitrator in the arbitration proceedings under this section;
- b) Where a tribunal, which is not established in accordance with article 3.29, are not engage in a period of ninety (90) days from the date that the claim is submitted to arbitration, the Secretary General at the request of any of the Parties, at its discretion, shall appoint the arbitrator or arbitrators not yet appointed, but not to the Chairman of the Tribunal who shall be appointed pursuant to subparagraph (c). In any case, the majority of the arbitrators shall not be nationals of the opposing side or a national of the Party of litigants; or the investor.
- c) The Secretary-General shall appoint the presiding arbitrator from the roster referred to in article 3.27, ensuring that the President of the Court is not a national of the opposing side or a national of the Party of the investor litigants. In the event that is not available in the list an arbitrator as Chairman of the Tribunal, the Secretary-General shall appoint the arbitrators of the ICSID List of the President of the Court, wherever nationality different from the opposing side or the party of the investor litigants.

## **Article 327. List of Arbitrators**

From the date of Entry into Force of this Treaty, the Parties shall establish and maintain a list of arbitrators as possible, or presiding judge to appoint the arbitrators of a court of cumulation, according to paragraph 4 of article 3.29, having the same qualities referred to the ICSID Convention, the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules and with experience in International Law and investment matters. For this purpose, roster members shall be appointed by consensus regardless of their nationality and each Party shall propose up to five (5) arbitrators for a period of two years, renewable by consensus if the parties so agree. In the event of the death or the resignation of a member of the list, the parties agree to designate another person to replace in its functions for the remainder of the period for which it was appointed.

## **Article 328. Agreement to Appointment of Arbitrators**

For purposes of article 39 of the ICSID Convention and article 7 of part C of the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on the literal c) of article 3.26, or on the basis of nationality:

- a) The opposing side agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and
- b) An investor litigants, either on its own behalf or on behalf of an enterprise) may submit a claim to arbitration or continue

the procedure under the ICSID Convention or the ICSID Additional Facility Rules only if the investor combatant and, where appropriate, the enterprise to express their consent in writing to the appointment of each member of the Tribunal.

## **Article 329. Cumulation of Procedures**

1. A tribunal established under this article cumulation will be in accordance with the UNCITRAL Arbitration Rules and shall act in accordance with such rules, except as provided in this section.

2. Where a tribunal of cumulation determines that claims submitted to arbitration under article 3.22, raise issues of fact and law together, the Tribunal cumulation, in the interest of fair and efficient resolution, and having listened warring parties may assume jurisdiction, processing and resolve:

a) All or part of the claims; jointly; or

b) One or more of the claims in the understanding that this will contribute to the resolution of the others.

3. A party seeking a litigant cumulation order under paragraph 2 shall request the Secretary-General to establish a tribunal of cumulation and in the request shall specify:

a) On behalf of the party or parties litigant investors against which the order is sought to obtain cumulation;

b) The nature of the order sought and cumulation;

c) The rationale underlying the request.

4. Within a period of sixty (60) days from the date of receipt of the request, the Secretary-General shall establish a tribunal composed of three arbitrators cumulation (3). The Secretary-General shall appoint the list of arbitrators referred to in article 3.27 The President of the Court of cumulation, who shall not be a national of the opposing side or a national of the Party of the investor litigants. In the event that is not available in the list an arbitrator to chair the cumulation Tribunal, the Secretary-General shall appoint the arbitrators of the ICSID List of the Chairman of the Tribunal who shall not be a national of the opposing side or a national of the Party of the investor litigants. The Secretary-General shall appoint the other two members of the Tribunal (2) cumulation of the list of arbitrators referred to in article 3.27 and, where not available in that list the ICSID, selected from the Panel of Arbitrators. If there is no availability of arbitrators in that list, the Secretary-General shall make the appointment at its discretion missing. One member shall be a national of the opposing side and the accumulation of another member of the Tribunal shall be a national of a party of the disputants investors.

5. Where a tribunal has been established under this article, the cumulation investor litigant who has submitted a claim to arbitration under article 3.19 and that has not been named in a request for cumulation made under paragraph 3 may apply in writing to the consolidation tribunal that it be included in an order of cumulation made under paragraph 2. and in the request shall specify:

a) The name and address and, where appropriate, the name and address of the enterprise;

b) The nature of the order sought and cumulation;

c) The reasons for the request.

6. The cumulation provided for by the investor concerned, a copy of the request to investors of cumulation contending that would be subject to avoidance of cumulation.

7. A Tribunal shall not have jurisdiction to decide a claim or part thereof, in respect of which it has assumed jurisdiction a court of cumulation.

8. At the request of a party, a litigant cumulation tribunal may, pending its decision under paragraph 2, provided that the proceedings of a tribunal shall be suspended until it is resolved on cumulation of origin. Ordered by the court of cumulation should be accepted by the Tribunal.

## **Article 330. Notifications**

1. Within fifteen (15) days from the date of its receipt, the opposing side to the Secretariat shall transmit a copy of:

a) A request for arbitration made under paragraph 1 of Article 36 of the ICSID Convention;

b) A notice of arbitration under article 2 of part C of the ICSID Additional Facility Rules; or

- c) A notice of arbitration in accordance with the UNCITRAL Arbitration Rules.
2. The opposing side shall deliver to the Secretariat a copy of a request made under paragraph 3 of article 3.29:
- a) Within a period of fifteen (15) days of receipt of the request, in the case of a request made by the investor combatant; or
  - b) Within a period of fifteen (15) days from the date of the request, in the case of a request made by the opposing side.
3. The opposing side shall deliver to the Secretariat a copy of a request made under paragraph 5 of article 3.29 within fifteen (15) days from the date of receipt of the request.
4. The secretariat shall maintain a public register of the documents referred to in paragraphs 2 and 3.
5. The opposing side shall provide to the other parties:
- a) Written notice of a claim that has been submitted to arbitration no later than thirty (30) days after the date of submission of the claim to arbitration; and
  - b) Copies of all pleadings filed in the arbitration proceedings.

### **Article 331. A Party**

Upon written notice to the parties to the conflict, a Party may make submissions to a tribunal established under this section on questions of interpretation of this Treaty, being discussed before the Tribunal.

### **Article 332. The Arbitral Proceedings**

The headquarters of the arbitral proceedings shall be located in the territory of the party opposing combatants unless the parties otherwise agree, in any case, a tribunal established under this section shall conduct the arbitration proceedings in the territory of a Party that is a member of the New York Convention, which shall be elected in accordance with:

- a) The ICSID Additional Facility Rules if the arbitration rules or those is under the ICSID Convention; or
- b) The UNCITRAL Arbitration Rules if the arbitration is under those rules.

### **Article 333. Applicable Law**

- 1. A tribunal established under this section shall decide the dispute to be submitted to it in accordance with this Treaty and applicable rules of international law and in the legislation of the opposing side.
- 2. An interpretation by the Council on a provision of this Treaty shall be binding on a tribunal established under this section.

### **Article 334. Interpretation of Annexes**

- 1. When a party claims that the measure as a defence alleged to be a breach is within the scope of a reservation or exception set out in annexes, at the request of the opposing side, a tribunal established under this section shall apply to the Council an interpretation on this matter. The Council shall, within a period of sixty (60) days of the delivery of the request in writing and shall submit its interpretation to the Tribunal.
- 2. Interpretation of the Council referred to in paragraph 1 shall be binding on a tribunal established under this section. If the Council fails to submit an interpretation within the time-limit, the Tribunal shall decide on the matter.

### **Article 335. Expert Opinions**

Without prejudice to the appointment of other kinds of experts where this is authorized by the applicable arbitration rules, the Tribunal established under this section, at the request of a litigant or party on its own initiative unless the parties to the conflict do not accept, may appoint one or more experts to rule in writing any issue that a party combatant in a proceeding, in accordance with the terms and conditions to be agreed upon between the warring parties.

### **Article 336. Provisional or Protective Measures**

A tribunal established under this section shall apply to national courts or warring parties interim or precautionary measures

to preserve the rights of the opposing side or to ensure that the jurisdiction of the Tribunal established under this section, takes full effects. A tribunal may not order the suspension measure of compliance or alleged to be a breach referred to in article 3.19.

## **Article 337. Final Award**

1. Where a tribunal established under this section to obtain a final award against a party, the Tribunal may award only:
  - a) The payment of monetary damages and any applicable interest; or
  - b) Restitution of property in which case the award shall provide that the opposing side may pay pecuniary damage, plus interest, in lieu of restitution.
2. A tribunal established under this section may also order the payment of fees in accordance with the applicable arbitration rules.
3. Where an investor makes a claim on behalf of a company based in Article 3.19:
  - a) The award for the restitution of property shall provide that were accorded to the enterprise; and
  - b) The award which awarded non-pecuniary damages and interest shall provide that the sum be paid to the enterprise.
4. A tribunal established under this section, may not order a party to pay punitive damages.
5. For the purposes of paragraphs 1 and 2 the damage was determined in the currency in which the investment has been made.
6. The award shall be made without prejudice to any right that any person having legal interest on compensation for the damage suffered, in accordance with the applicable legislation.

## **Article 338. Definitivity and Enforcement of the Award**

1. An award made by a tribunal established under this section shall be binding only for opposing parties and only in respect of the particular case.

2. Subject to paragraph 3, and the applicable review clarification or cancellation

An award under the mechanism which is appropriate in the opinion of the Secretary-General, a Party combatant abide by and comply with an award without delay.

3. A party litigants may seek enforcement of a final award provided that:

a) In the case of a final award made under the ICSID Convention:

i) Within one hundred and twenty (120) days from the date the award was rendered without any opposing side has requested clarification, revision or annulment of the same; or

ii) Have concluded the procedures for clarification, revision or annulment; or

b) In the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

i) Within ninety (90) days from the date the award was rendered without opposing side has initiated any proceedings for interpretation, correction, or additional award cancellation; or

ii) Have concluded the procedures of interpretation or correction or additional award or has been determined by a court of the opposing side an application for annulment and this resolution is not likely to be challenged.

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

5. Where a Party combatant fails to comply with the final award, the Council, upon receipt of a request by a Party whose investor was a party to the arbitration procedure incorporates an arbitral tribunal pursuant to Article 3.25 to 3.28 and within a period of thirty (30) days after the tribunal shall render a resolution containing:

a) A determination that the failure or refusal of the terms of the final award is inconsistent with the obligations of this Treaty; and

b) A recommendation that abide by the Party or comply with the final award.

6. The Investor litigants may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention or the Inter-American Convention regardless which have been initiated or procedures referred to in paragraph 5.

7. For purposes of article I of the New York Convention and article I of the Inter-American Convention, it shall be considered that the claim is submitted to arbitration under this section, arises out of a commercial relationship or transaction.

## **Article 339. General Provisions**

When a claim is submitted to arbitration

1. A claim shall be deemed submitted to arbitration under this section when:

- a) The request for arbitration under paragraph 1 of Article 36 of the ICSID Convention has been received by the Secretary-General;
- b) The notice of arbitration under article 2 of part C of the ICSID Additional Facility Rules has been received by the Secretary-General; or
- c) The notice of arbitration under the UNCITRAL Arbitration Rules is received by the opposing side.

Service of documents

2. Delivery of notice and other documents on a party shall be done in the place designated by it in Annex 3.39 (2).

Payments under a contract of insurance or guarantee

3. In an arbitration under this section a Party not used as a counterclaim, defence, right of set-off or other litigant, that the investor has received or will receive pursuant to a contract of insurance or guarantee, indemnification or other compensation for all or part of the alleged damages whose refund sought.

Publication of decisions

4. Publication of decisions shall be conducted in accordance with the rules of procedure of each party. Such publication shall not include aspects that either Party considers contending confidential.

## **Article 340. Subrogation**

If a party or its designated agency makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other contracting party, the latter shall recognise the assignment of any right or claim of such investor to the former Party or its designated agency as well as the right by virtue of subrogation to exercise the rights and enforce the claims of that investor. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

For the purposes of Article 3.11 (1) (a) are covered by the term public interest:

- a) In the case of Costa Rica: public purpose or public interest.
- b) In the case of El Salvador: public purpose or social interest;
- c) In the case of Guatemala: usefulness collective social interest or public interest;
- d) In the case of Honduras: public need or interest; and
- e) In the case of Nicaragua: public purpose or social interest.

Submission of a claim to arbitration

In the case of Honduras reserves in full implementation of article 3.22 (1) (a), while continuing cases in the declaration made by signing the ICSID Convention.

3.39 (annex 2)

Service of documents

For the purposes of article 3.39 (2), the place of delivery of notices and other documents under section B shall be:

1. In the case of Costa Rica: Department of Foreign Trade, Ministry of Foreign Trade, Foreign Trade Centre, Avenue 3 Street, 40, San José, Costa Rica.
2. In the case of El Salvador: Department of Trade Policy, Ministry of Economy, Alameda Juan Pablo II Street, Guadeloupe and master plan, building C "", San Salvador, El Salvador, or its successor;
3. In the case of Guatemala: Administration Department of Foreign Trade, Ministry of Economy, 8 to Avenue 10-43 area 1, Guatemala, or its successor;
4. In the case of Honduras: General Administration, Ministry of Industry and Trade, former building from Lloyds Bank, pedestrian street from the warehouse Salamé, Tegucigalpa, Honduras, or its successor; and
5. In the case of Nicaragua: Department of Foreign Trade, Ministry of Industry and Trade, KM. 6 road, Masaya, Managua, Nicaragua, or its successor.

## Chapter 4. Cross-border Trade In Services

1. For purposes of this chapter, the reference to central Governments includes non-governmental agencies to exercise powers regulations and administrative or other governmental delegated to it by that Government.

2. For purposes of this chapter:

Cross-border trade in services supply the means of a service:

- a) The territory of a party into the territory of another party;
- b) In the territory of one party to the service consumer of the other party; and
- c) By a national of a Party in the territory of another party; consumer service means any person that receives or uses a service;

"enterprise means an enterprise as defined in article 2.01, and a branch of an enterprise;

Service provider means any person that seeks to provide or provides a service transfronterizamente;

Service provider of the other party means a person of another party that seeks to provide or provides a service;

Non-discriminatory quantitative restrictions: a measure which imposes limitations on:

- a) The number of service suppliers whether in the form of a quota monopoly or an economic needs test; or by any quantitative or other means;
- b) The operations of any service provider, either through a quota monopoly or an economic needs test; or by any other quantitative means;

A service supplied in the exercise of governmental authority means any service supplied by a public institution, which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

Specialty air services means services air, surveying, mapping aerial photography, control of forest fires, aerial firefighting services, advertising, towing planeadores, parachutists, air services for construction, air transport in sawn timber and timber, flights overview, training, inspection and monitoring and aerial spraying air;

Professional services means services that require for their benefit or an equivalent degree and which is authorised or regulated in each case restricted by a party but does not include services provided by persons engaged in a profession or to the crews of vessels and aircraft;

### 402. Scope and Extent of Obligations

1. This chapter applies to measures that a party adopts or maintains on cross-border trade in services by service providers



of another party, including those relating to:

- a) The production, distribution, sale and delivery of a service;
- b) The purchase or use of a service;
- c) Access to and use of:
  - i) Distribution of transportation systems and in connection with the provision of a service; and
  - ii) Public telecommunications networks and services;
- d) The presence in its territory of a service provider of the other party; and
- e) The provision of a bond or other form of financial security as a condition for the provision of a service.

2. This chapter does not apply to:

- a) Air services including domestic and international air transportation, with or without routing equipment and ancillary activities in support of air services except:
  - i) Maintenance services and repair of aircraft during the period in which an aircraft is withdrawn from service;
  - ii) Air and specialty services;
  - iii) Computer reservation systems;
- b) Financial services;
- c) Subsidies or grants provided by a party or a state enterprise, including loans and government-supported guarantees or insurance;
- d) Governmental functions or services, including but not limited to, the enforcement of laws, rehabilitation, social security insurance or insurance on income security or public social welfare, education, training and public health care for children.

3. Nothing in this chapter shall be construed as:

- a) Impose any obligation on a Party with respect to a national of another party seeking access to its employment market or who is permanently employed in its territory, or confer any right on that with respect to that national access or employment; or
- b) Impose any obligations or confer any right on a Party with respect to government procurement by a party or a State enterprise.

4. For the purposes of this chapter, "adopts measures that a party or maintains" to measures adopted or maintained by:

- a) Central and municipal governments, where appropriate; and
- b) Non-governmental agencies to exercise powers regulations and administrative or other governmental delegated to it by that Government.

In respect of non-governmental bodies referred to in subparagraph (b) To exercise powers or other governmental and administrative regulations which have been delegated in accordance with national legislation, the Central Government shall take such reasonable measures as may be available to it to ensure that they comply with the provisions of this chapter.

5. The provisions of this chapter shall apply to measures relating to services listed in annexes, only to the extent and terms stipulated therein.

1. Each Party shall accord immediately and unconditionally to services and service providers of another party treatment no less favourable than that it accords to like services and service providers of any other country Party or non-Party.

2. The provisions of this chapter shall not be construed to prevent a party advantages accorded to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are produced or consumed locally.

1. Each Party shall accord to services and service providers of another party treatment no less favourable than that accorded to its own like services and service providers.

2. Each Party shall comply with the requirements of paragraph 1 accord to services and service suppliers of another Party

formally identical or formally different treatment to that accorded to its own like services and service providers.

3. It shall be considered that formally identical or formally different treatment less favourable if it modifies the conditions of competition in favour of services or service suppliers of the party compared to like services or service providers of another party.

#### **405. Local Presence**

No Party shall require a service provider of the other party to establish or maintain a representative office or other company or resident in its territory as a condition for the cross-border provision of a service.

1. Articles 4.03, 4.04 0405 and do not apply to:

- a) Any existing measure inconsistent to maintain a Party as set out in its schedule to inconsistent existing measures (annex I);
- b) The continuation or prompt renewal of any measure inconsistent referred to in subparagraph (a); or
- c) The reform to any inconsistent measure referred to in subparagraph (a), provided that the amendment does not decrease the level of conformity of the measure as it was in force before the reform, and with articles 4.03 4.04 0405.

2. The parties are not required to register municipal measures.

1. Each Party shall set out in its Annex IV to Schedule (non-discriminatory quantitative restrictions), within six (6) months from the date of Entry into Force of this Treaty, any quantitative restriction it maintains that at the national level.

2. Each Party shall notify any quantitative restriction that it adopts after the date of Entry into Force of this Treaty and the restriction shall set out in its Annex IV to Schedule (non-discriminatory quantitative restrictions).

3. The Parties shall endeavour, at least every two (2) years, to negotiate the liberalization of the quantitative restrictions set out in its schedule to non-discriminatory quantitative restrictions (annex IV) In accordance with paragraphs 1 and 2.

#### **408. Future Liberalization**

With a view to achieving a progressively higher level of liberalisation, the parties undertake to conduct future negotiations, at least every two (2) years, within the Council, aimed at eliminating remaining restrictions listed in accordance with article 4.06 (1).

#### **409. Committee on Investment and Cross-border Trade In Services**

1. The Committee on investment and cross-border trade in services, whose composition stated in annex 4.09.

2. Without prejudice to Article 9.04, the Committee shall have the following functions:

- a) To facilitate the exchange of information between the parties, as well as technical cooperation in the field of trade in services and investment; and
- b) Consider issues of interest to the parties related to trade in services and investment discussed in international fora.

#### **410. Proceedings**

The Committee shall establish procedures for:

- a) Each Party shall notify the other Party and include in its relevant annexes:
  - i) Non-discriminatory quantitative restrictions, in accordance with article 4.07; and
  - ii) Modifications to the measures referred to in article 4.06 (1); and
- b) Future negotiations in order to expand and improve overall liberalization of services between the parties in accordance with article 4.08.

#### **411. Granting Licences and Permits and Authorizations**

With a view to ensuring that any measure that adopts or maintains a Party with respect to the requirements and procedures for the granting of licences and permits and authorizations to nationals of the other party does not constitute an unnecessary barrier to trade, each Party shall endeavour to ensure that such measure:

- a) Based on objective and transparent criteria, such as the capacity, competence and the ability to provide a service;
- b) Not more burdensome than necessary to ensure the quality of a service; and
- c) Do not constitute a disguised restriction on the cross-border provision of a service.

## **412. Denial of Benefits**

A Party may deny the benefits of this chapter to a service provider of another party, subject to prior notification and consultation, where the party establishes that the service is being supplied by a service provider that has no substantive business operations in the territory of the other party and that, in accordance with the legislation of that Party is owned or controlled by persons of a non- party.

## **413. Professional Services**

4.13 In annex on Professional Services lays down the rules to be observed by the parties to harmonize measures that normarán professional services through the granting of authorisations for professional practice.

## **414. Land Transportation Services**

The Parties shall develop a work programme for the purpose of enhancing land transport flows between their territories.

## **415. Technical Cooperation**

The Parties shall cooperate with them to establish within one (1) year after the Entry into Force of this Treaty, a system for service providers to provide information concerning their markets in relation to:

- a) Commercial and technical aspects of the supply of services;
- b) The possibility of obtaining technology services; and
- c) All those aspects that identifies the Council on Services.

## **416. Relationship with Multilateral Agreements on Services**

1. Including the parties undertake to apply the provisions contained in the multilateral agreements on services of which they are members.

2. Notwithstanding the preceding paragraph, in the event of any inconsistency between this Agreement and this treaty, the latter shall prevail over those to the extent of the inconsistency.

Recognition of certificates

1. Where a party recognise unilaterally or by agreement with another country, titles or academic degrees obtained in the territory of the other party or non-party country, nothing in Article 4.02, shall be construed as requiring a party to recognition of qualifications obtained in the territory of the other party.

2. Notwithstanding paragraph 1:

i) A Party that is a party to an agreement or arrangement with the other country shall afford adequate opportunity for other interested parties to negotiate their accession to such an agreement or arrangement to negotiate or comparable with other.

ii) Where a Party grants recognition autonomously, another party to provide an adequate opportunity to demonstrate that the education or experience obtained licenses or certifications or requirements met in that other party territory should be recognized.

3. The parties reaffirm article 31 of Protocol to the Central American Economic Integration (Guatemala) protocol.

Foundation for the recognition of qualifications and authorisation to practise

4. The parties agree that the processes of mutual recognition of qualifications and the granting of waivers to the Bar, shall be made on the basis of improving the quality of professional services through the establishment of standards and criteria for those processes, while protecting consumers and safeguarding the public interest.

5. The Parties shall encourage the relevant agencies, inter alia, to the competent governmental authorities and professional associations and bodies, where appropriate, to:

a) Such criteria and standards; and

b) Formulate and to provide recommendations on mutual recognition of professional qualifications and licensing of professional practice.

6. The standards and criteria referred to in paragraph 4 may consider the legislation of each Party and an indication of the following elements: education, reviews, experience, conduct and ethics, professional development and recertification, scope, local knowledge, monitoring and consumer protection.

Review

7. The Parties shall review at least once a year, the implementation of the provisions of this annex.

## **Chapter 5. Telecommunications**

### **501. Exclusion**

This chapter does not apply to Costa Rica.

### **502. Definitions**

For purposes of this chapter:

A telecommunications company internal communications means through which an enterprise communicates:

a) Internally or with or among its subsidiaries and branches and subsidiaries, as defined by each Party; or

b) A non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it;

But does not include telecommunications services supplied to persons other than those described in this definition;

Authorized: the terminal equipment or other equipment that has been adopted to connect to the public telecommunications network in accordance with the conformity assessment procedures of a party;

Terminal equipment means any device capable of analogue or digital processing, commute, marking, receiving or transmitting signals by electromagnetic means and be connected to the public telecommunications network, through broadcast or cable connections, at a terminal;

Action on standardisation standards: technical regulations and conformity assessment procedures;

Monopoly means an entity, including a consortium or government agency that is maintained or designated according to its legislation, if it so permits, as the sole supplier of public telecommunications networks or services in any relevant market in the territory of a party;

Conformity assessment procedure procedure used any means, directly or indirectly, to determine whether the relevant procedures established by technical regulations or standards are fulfilled, including sampling, inspection, verification and security; evaluation of conformity; registration, accreditation and adoption, separately or in different combinations, and includes the procedures referred to in annex 5.02;

Protocol: a set of rules and formats governing the exchange of information between two peer entities for the purposes of transfer of information and data;

Main incumbent provider or operator: a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of control over essential facilities or use of its position in the market;

The network of terminal point: the final demarcation of the public telecommunications network user facilities;

Private telecommunication network means the telecommunications network used exclusively for internal communications between persons of a company or predetermined;

Public telecommunications network means the telecommunications network used to exploit commercially telecommunications services designed to meet the needs of the general public, excluding telecommunications terminal equipment or users of telecommunications networks that are beyond the point of the network;

Telecommunications service means a service provided by means of transmission and reception of signals by physical line, radioelectricidad, optical or other electromagnetic systems, but does not mean cable broadcasting or other electromagnetic distribution of radio or television programming;

Public telecommunications service telecommunications means any service that requires a party explicitly or indeed to be offered to the public generally, including telegraph, telex, telephone and data transmission typically involves real-time transmission of information provided by the user between two or more points without any change of end-to-end "" in the form or content of the information of the user;

Enhanced or value added services: telecommunications services employing computer processing systems that:

- a) Acting on the format, content and protocol, code or similar aspects of information transmitted user;
- b) Additional information provided to the client, or different restructured; or
- c) Involve user interaction with the stored information; and

Telecommunications means any emission, transmission or reception of signs, signals, writings, images and sounds and information on any kind of physical line, radioelectricidad, optical or other electromagnetic systems.

1. This chapter applies to:

- a) Measures adopted or maintained by a Party relating to the provision of public services

Telecommunications;

- b) Measures adopted or maintained by a Party relating to access to and use of networks or

Public telecommunications services by persons of another party, including access and use by private persons operating such networks so as to carry out their internal communications of enterprises;

- c) Measures adopted or maintained by a Party relating to the provision of value-added services enhanced or by persons of another party in the territory of the first or across its borders; and
- d) Standardization measures relating to the attachment of terminal or other equipment to the public telecommunications networks.

2. Except to ensure that persons operating broadcast stations and cable systems have access to and use of public telecommunications networks and services this chapter does not apply to measures that a party adopts or maintains relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this chapter shall be construed as:

- a) To require a party to authorize a person of another party to establish, construction, acquisition, leases, operate or supply telecommunications networks or services;
- b) Oblige a party or that it may require a person to establish, construction, acquisition, leases, operate or supply telecommunications networks or services not offered to the public generally;
- c) Prevent a Party from prohibiting persons operating private networks from using their telecommunications networks or to supply public telecommunications networks or services to third persons; or
- d) To require a party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable broadcast or as a public telecommunications network.

## **504. Access to Public Telecommunications Networks and Services and Its Use**

1. For the purposes of this article, non-discriminatory terms and conditions no less favourable than those accorded to any

other customer or user of public telecommunications networks or services in like circumstances.

2. Each Party shall ensure that persons of the other party have access to and use of any public telecommunications network or service offered in its territory or across borders, including private leased circuits on reasonable and non-discriminatory terms and conditions, for the conduct of business, including as set out in the other paragraphs of this article.

3. Subject to paragraphs 7 and 8, each Party shall ensure that persons of the other party are permitted to:

a) Purchase or lease and interconnect terminal equipment or other equipment that interfaces with the public telecommunications network;

b) Interconnect private owned or leased circuits with public telecommunications networks in the territory of that Party or across its borders through marking including direct access to and from their customers or users or with leased circuits or owned by another person on mutually agreed terms and conditions by those persons, in accordance with annex 5.04;

c) Functions switching, marking and processing; and

d) Operating protocols use of their choice in accordance with the technical plans of each party.

4. Each Party shall ensure that the pricing of public telecommunications services reflects economic costs directly related to providing the services, without prejudice to the applicable legislation. Nothing in this paragraph shall be construed as to prevent cross-subsidization between public telecommunications services.

5. Each Party shall ensure that persons of another Party may use public telecommunications networks or services to transmit the information in its territory or across its borders including for internal communications of enterprises, and for access to information contained in databases or otherwise stored in machine-readable form by a machine in the territory of the other party.

6. In addition to the provisions of article 8.02, nothing in this chapter shall be construed as preventing a Party may adopt or apply any measure necessary to:

a) To ensure the security and confidentiality of messages; or

b) Protect the privacy of subscribers public telecommunications networks or services.

7. In addition to the provisions of article 5.06, each Party shall ensure that no condition is imposed more access to public telecommunications networks or services and their use, that necessary to:

a) Safeguard the public service responsibilities of providers 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.

8. Provided that conditions for access to public telecommunications networks or services and their use fulfil the criteria set out in paragraph 7, such conditions may include:

a) Restrictions on resale or shared use of such services;

b) Requirements for the use of specific technical interfaces, interface, including protocols for interconnection with such networks or services;

c) Restrictions on interconnection of private owned or leased circuits with such networks or services or with leased circuits or owned by another person; and when they are used for the supply of public telecommunications networks or services; and

d) Procedures for licensing, permitting, concessions, records or notifications, adopted or maintained, are transparent and to the processing of applications is expeditiously resolved.

## **505. Conditions for the Provision of Value-added or Enhanced Services**

1. Each Party shall ensure that:

a) Any procedure that it adopts or maintains for licensing, permitting, concessions, records or notifications relating to the provision of value-added services enhanced or is transparent and non-discriminatory and that applications are resolved expeditiously; and

b) The information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or facilities or equipment or other terminal equipment the applicant to comply with applicable technical standards or regulations of the Party, or the requirements related to the legal constitution of the applicant.

2. Without prejudice to the laws of each party, no Party shall require a person providing enhanced or value-added services to:

a) Such services to the public generally;

b) Justify their tariffs according to its costs;

c) A fee;

d) Its interconnect networks with any particular customer or network; or

e) Satisfy any standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

3. Notwithstanding paragraph 2 (c), a Party may require the filing of a tariff by:

a) A service provider to remedy a practice that of provider has found that the Party in a particular case as anti-competitive, in accordance with its laws; or

b) A monopoly, main provider or incumbent operator to implement the provisions of article 5.07.

1. Each Party shall ensure that its measures relating to the normalization relating to the attachment of terminal or other equipment to the public telecommunications networks, including those measures relating to the use of measuring equipment for testing and conformity assessment procedure, are adopted or maintained only to the extent necessary to:

a) Technical prevent damage to public telecommunications networks;

b) Technical prevent interference with public telecommunications services, or deterioration;

c) Prevent electromagnetic interference, and ensure compatibility with other uses of spectrum;

d) Prevent the malfunctioning of valuation, collection and invoicing;

e) User ensuring safety and access to public telecommunications networks or services; or

f) To ensure the efficient use of spectrum.

2. Each Party may establish the approval requirement for the attachment to the public telecommunications network of terminal or other equipment that is not authorized, provided that the criteria for approval are consistent with paragraph 1.

3. Each Party shall ensure that the endpoints of public telecommunications networks are defined on a reasonable and transparent basis.

4. Neither party may require separate authorization for equipment that is connected on customer side of the 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 in effect are diligently processed;

b) Permit any technically qualified entity to perform the required testing to terminal equipment or other equipment to be attached to the public telecommunications network, in accordance with the conformity assessment procedures of that Party, subject to the right of the same to review the accuracy and completeness of the test results; and

c) It shall ensure that are not discriminatory measures it adopts or maintains to authorize individuals as agents for suppliers of telecommunications equipment before the competent authorities of that Party for conformity assessment.

6. Not later than twelve (12) months after the date of Entry into Force of this Treaty, each Party shall, as part of its conformity assessment procedures, the provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other party, in accordance with the measures and procedures relating to the standardization of the Party to which it relates to accept.

## **507. Monopolies or Anticompetitive Practices**

1. Where a party maintains or designates a monopoly or a main provider or incumbent operator to provide public telecommunications networks and services and it competes directly or through a branch in the provision of enhanced or value-added services or other goods or services associated with telecommunications, that Party shall seek to ensure that the monopoly supplier

Main or operator does not use its dominant position to engage in anticompetitive practices in these markets, either directly or through its dealings with its subsidiaries, so that affects desventajosamente to a person of the other party. Such practices may include predatory conduct and cross-subsidization or discrimination in access to public telecommunications networks and services.

2. Each Party shall adopt or maintain effective measures to prevent anticompetitive conduct referred to in paragraph 1, such as:

- a) Accounting requirements;
- b) Requirements for structural separation;
- c) Rules to ensure that monopoly, the main provider or incumbent operator accorded to its competitors access to and use of their networks or its public telecommunications services on terms and conditions no less favourable than those it accords to itself or its affiliates; or
- d) Rules to ensure the timely disclosure of technical changes to public telecommunications networks and their interfaces.

## **508. Transparency**

In addition to the provisions of article 10.02, each Party shall make publicly available its measures relating to access to public telecommunications networks or services and its use, including measures relating to:

- a) Tariffs and other terms and conditions of service;
- b) Technical specifications of interfaces with such networks and services;
- c) Information on bodies responsible for the preparation and adoption of standards affecting such access and use;
- d) Conditions for the attachment of terminal or other equipment to public telecommunications networks; and
- e) Notification requirements, licensing or permit registration certificate concession.

## **509. Relationship to other Chapters**

In the event of incompatibility between any provision of this chapter and any other provision of the chapter shall prevail to the extent of the inconsistency.

## **510. Relationship with Organizations and International Treaties**

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

1. In order to encourage the development of interoperable telecommunications services, the Parties shall cooperate in the good functioning of the spectrum, exchange of technical information in the development of training programs and other related intergovernmental activities. In pursuance of this obligation, the Parties shall put special emphasis to existing exchange programs.

2. The Parties shall endeavour to deepen the trade of all telecommunications services, including public telecommunications networks and services.

For purposes of this chapter, the conformity assessment procedures include:

- a) In the case of El Salvador:



- i) Decreto Legislativo No. 142 of 6 November 1997, Telecommunications Act; and
- ii) Executive Decree No. 64 of 15 May 1998, the regulation of the Telecommunications Act;
- b) In the case of Guatemala:
  - i) Decree No. 94-96 of 17 October 1996 Congressional Ley General de Telecomunicaciones;
  - ii) Decree No. 115-97 of 19 November 1997 congressional amendments to the Ley General de Telecomunicaciones;
  - iii) Governmental Agreement No. 574-98 of 2 September 1998 rules for the use of satellite systems in Guatemala; and
  - (IV) Government Agreement No. 408-99 of 25 June 1999, rules for the provision of international telephone service;
- c) In the case of Honduras:
  - i) Decree No 185-95, framework Act of the telecommunications sector, the Official Gazette published in Diario "31 October 1995;
  - ii) No 89-97 agreement, the telecommunications sector, published in the Diario "Official Gazette on 27 May 1997;
  - iii) Decree No 244-98, published in Diario "The Official Gazette 19 September 1998;
  - (IV) Decree No 89-99, published in the Diario "Official Gazette on 25 May 1999;
  - v) Resolution 003 OD / 99, published in the Diario "Official Gazette on 26 February 1999; and
  - (VI) Resolution 105 / 98, published in the Diario "Official Gazette on 11 July 1998; and
- d) In the case of Nicaragua:
  - i) Law No. 200 of 8 August 1995, general act of telecommunications and postal services, published in the Official Gazette No Diario "154 of 18 August 1995;
  - ii) Law No. 210 of 30 November 1995, act of incorporation of individuals in the operation and expansion of public telecommunications, published in Diario "The Official Gazette No 231 of 7 December 1995;
  - iii) Decree No 19-96 of 12 September 1996, regulations of telecommunications and postal services, published in Diario The Official Gazette, No "177 of 19 September 1996;
  - (IV) Law No 293 of 1 July 1998, amending Act No. 210, published in the Official Gazette No 123 Diario "of 2 July 1998; and
  - v) Nicaragua Commercial Code of 1916.

For purposes of section 5.04, in the case of El Salvador, Guatemala, Honduras and Nicaragua means

The interconnection of private circuits with public telecommunications networks, shall not

Access to such traffic from private circuits with public networks or vice versa, whether such circuits

Private owned or leased.

## **Chapter 6. Financial Services**

### **601. Definitions**

For purposes of this chapter:

Regulatory authorities: any government entity or supervisory authority over Financial Services service or financial institutions.

Public entity means a central bank or monetary authority or by any other public institution of the financial system of a Party that is owned or controlled, when it is not exercising business functions;

Institución financial means any financial intermediary or other enterprise that is authorised to provide financial services or supervised and regulated as a financial institution under the law of the Party in whose territory it was incorporated;

Financial institution of the other party means a financial institution constituted in the territory of a Party that is owned or

controlled by persons of the other party;

Investment means every kind of assets or rights of any kind, acquired or used for the purpose of obtaining an economic benefit or other business purposes, with resources transferred or acquired by an investor reinvested and includes:

a) A company, shares of a company; shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:

i) The enterprise is an affiliate of the investor; or

ii) The original maturity of the debt instrument or loan is at least three (3) years;

b) An interest in an enterprise that grants to the owner the right to participate in the assets of that enterprise in liquidation, provided that it does not result in a debt instrument or a loan excluded under subparagraph (a);

c) Real estate or other property, tangible or intangible rights, including in the field of intellectual property as well as any other proprietary right (such as mortgages, pledge, usufruct and similar rights), acquired with the expectation of used or with the purpose of obtaining an economic benefit or other business purposes;

d) Participation or benefit resulting of capital or other resources committed for the development of an economic activity in the territory of a party, inter alia, under:

i) Contracts involving the presence of an investor property in the territory of the party, including concessions and contracts for construction and turnkey; or

ii) Contracts where remuneration depends substantially on the production, income or profits of an enterprise; and

e) A loan granted by a service or a Financial Services value of debt owned by the same except a loan to a financial institution or a value of debt issued by the same;

But investment does not mean,

1. A payment obligation or a credit granted to the State or a state enterprise;

2. Monetary claims derived exclusively from:

i) Commercial contracts for the sale of goods or services by a national or enterprise in the territory of a party to an enterprise in the territory of the other party; or

ii) The granting of credit in connection with a commercial transaction, the expiry date is less than three (3) years, such as trade financing; except a loan covered by the provisions of subparagraph (a);

3. Any other monetary claim that does not involve the kinds of interests set out in subparagraphs (a) to (e);

4. A loan to a financial institution or a debt owned by a financial institution, except a loan to a financial institution that is treated as capital for regulatory purposes, by any Party in whose territory the financial institution is located;

An investor of a Party means a Party or a state enterprise thereof, or a person of that Party that seeks to perform or performs or has made an investment in the territory of the other party. The intention to make an investment may occur, inter alia, through legal acts aimed at achieving the investment, or are in the process of committing the required financial resources therefor.

Investor combatant: an investor of a Party that makes a claim under section B of chapter 3;

Investment of an investor Party a means of an investment owned or controlled directly or indirectly by an investor of that Party in the territory of another party;

In case of a company, an investment is owned by an investor if the investor of a Party has an ownership of more than 50% of their equity capital.

An investment is controlled by an investor of a party if the investor has the power to:

i) Designate a majority of its directors or

ii) Conduct of any such operations;

Investments of a non-: investment of an investor Party that is not an investor of a party;

New financial service means a financial service not paid in the territory of the Party that is provided in 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 territory of the Party;

Agencies autoregulados means any non-governmental entity, including any securities or futures exchange or clearing house and any other organisation or association that exercises its own or delegated authority, control or supervision of financial institutions or Financial Services service;

Person means a person as defined in article 2.01, but does not include a branch of an enterprise of a non- Party;

Cross-border supply of financial services or cross-border trade in Financial Services

- a) The provision of a financial service within the territory of a party into the territory of another party;
- b) In the territory of a party by a person of that party to a person of the other party; or
- c) By a person of a Party in the territory of another party;

Financial Services Service of a Party means a person of a Party that is engaged in the business of providing financial services in its territory that seeks to perform or performs the Provision of Financial Services; and

Financial service means any service of a financial nature offered by a financial institution of a party. Financial services include all banking services, insurance and reinsurance services involving other financial intermediation and auxiliary services, including related financial nature.

## **602. Scope and Extent of Obligations**

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

- a) Financial institutions of the other party;
- b) Cross-border trade in financial services; and
- c) Investors of another party and to investments of investors in such financial institutions in the territory of the party.

2. This chapter does not apply to:

- a) Activities carried out by the monetary authorities or by any other public institution in pursuit of monetary or exchange rate policies;
- b) Activities or services forming part of a public retirement plan or public social security systems;
- c) The use of the financial resources of the other party; or
- d) Other activities or on behalf of the Financial Services or its party or public entities with the guarantee.

3. In the event of any inconsistency between the provisions of this chapter and any other provision of this, the treaty of this chapter shall prevail to the extent of the inconsistency.

4. Article 3.11 and section B of chapter 3 are incorporated into this chapter and shall form an integral part thereof.

## **603. Autoregulados Agencies**

When a party requires that a financial institution or a Financial Services Service is a member of another party, participates, or have access to an agency autoregulado to provide a financial service in its territory or to him, the Party shall ensure that such a body complies with the obligations of this chapter.

## **604. Right of Establishment**

1. The Parties recognize the principle that investors of each Party shall be permitted to establish a financial institution in the territory of another party, by any of the modalities for the establishment and operation of such legislation.
2. A Party may impose conditions on establishment and terms that are consistent with Article 6.06.

## **605. Cross-border Trade**

1. Each Party shall permit persons located in its territory, wherever located, to purchase Financial Services Financial Services Service of another party located in the territory of that other party. It does not require a party to permit such suppliers of Financial Services or advertising business carried out by any means in its territory. The Parties may define what is "notice" and "business" for purposes of this obligation.

2. Where a Party permits the cross-border supply of financial services and without prejudice to other means of prudential regulation of cross-border trade in Financial Services, a Party may require the registration of Financial Services Service of another party and of financial instruments.

## **606. National Treatment**

1. Each Party shall accord to investors of another party treatment no less favourable than it accords to its own like investors with respect to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of similar financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other party and to investments of investors of the other party in financial institutions treatment no less favourable than it accords to its own similar financial institutions and similar to its own like investments of investors in similar financial institutions with regard to the establishment, expansion and acquisition, administration, management, operation and sale or other disposition of financial institutions and investments.

3. Where a Party permits the cross-border provision of a financial service shall, pursuant to article 6.05 Financial Services Service of another party treatment no less favourable than it accords to its own Financial Services service with respect to the provision of such service.

4. The treatment that a Party shall accord to financial institutions and Financial Services Service of another party, either identical or different to that accorded to its own like services providers in institutions or is consistent with paragraphs 1 through 3 if affords equal competitive opportunities.

5. The treatment of a Party does not provide equal competitive opportunities if located in a disadvantaged position, similar financial institutions and similar Financial Services Service of another Party in their ability to provide financial services as compared with the ability of its own financial institutions and service providers of the party to provide such services.

## **607. Most Favoured Nation Treatment**

Each Party shall grant to financial institutions and Financial Services Service of another party to investors and to investments of investors in such financial institutions of the other party treatment no less favourable than that accorded in similar financial institutions and similar Financial Services Service, similar to investors and to such investments of investors in similar financial institutions of the other party or of a non- party.

## **608. Recognition and Harmonization**

1. In applying measures under this chapter, a Party may recognize prudential measures of another party or of a non- party. Such recognition may be accorded; harmonization achieved unilaterally or through other means; or based upon an agreement or arrangement with the other Party or non-Party.

2. The party that grants recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another party to demonstrate that circumstances exist in which there are or would be equivalent regulations, monitoring and implementation of the regulation and, where appropriate, procedures for the sharing of information between the parties.

3. Where a Party grants recognition of prudential measures under paragraph 1 and the circumstances set out in paragraph 2, that Party shall afford adequate opportunity for the other party to negotiate accession to the agreement or arrangement to negotiate or a comparable agreement or arrangement.

## **609. Exceptions**

1. Nothing in this chapter shall be construed as preventing a Party may adopt or maintain measures for prudential reasons such as:

a) Protect policy-holders funds, as well as to investors, depositors and creditors or other holders or beneficiaries of policies

or persons of fiduciary duties owed by a financial institution or a Financial Services service;

b) Maintaining security, integrity, responsibility or financial soundness of financial institutions or Financial Services Service; and

c) Ensuring the integrity and stability of the financial system of that Party.

2. Nothing in this chapter applies to non-discriminatory application of general measures taken by a public entity in the conduct of monetary policies or credit policies

Related or exchange rate policies. This paragraph shall not affect the obligations of any Party deriving from investment performance requirements with respect to measures covered by Chapter 3 or article 6.18.

3. Notwithstanding article 6.18, a Party may prevent or limit transfers by a financial institution or a supplier to Financial Services or for the benefit of an affiliate of related to such person or institution or in such a service provider, through the fair and non-discriminatory application of measures relating to maintenance of security, integrity, responsibility or financial soundness of financial institutions or Financial Services Service. This paragraph does not prejudice any other provision of this chapter that permits a party to restrict transfers.

4. Article 6.06, shall not apply to the issuance of exclusive rights that makes a party to a financial institution to provide a Financial Services referred to in article 6.02 (2) (b).

## **610. Transparency**

1. In addition to the provisions of article 10.02, regulatory authorities of each Party shall make available to all interested parties information on requirements to fill and submit a request to the supply of financial services.

2. At the request of the applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall without undue delay.

3. Regulatory authorities of each Party shall, within a period of one hundred and twenty (120 days), an administrative decision on a complete application relating to the provision of a financial service, submitted by an investor in a financial institution, by a financial institution or a Financial Services Service of the other party. The Authority shall notify the applicant without delay. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not feasible to issue a decision within one hundred and twenty (120 days), the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time.

4. Nothing in this chapter requires a party to disclose or allow access to:

a) Information related to the accounts and financial affairs of individual customers of financial institutions or Financial Services service; 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 a particular person.

5. The competent authorities of each Party shall maintain or establish one or more enquiry points to answer as soon as possible to all reasonable inquiries from interested persons regarding general application of measures taken by a Party under this chapter, are identified in annex 6.10.

## **611. Financial Services Committee**

1. The Financial Services Committee, whose composition stated in annex 6.10. It may also include representatives of other institutions where the responsible authorities as appropriate.

2. Without prejudice to Article 9.04, the Committee shall have the following functions:

a) Consider issues regarding Financial Services that are submitted by a party;

b) Participate in the dispute settlement procedures under this chapter and article 6.19; and

c) To facilitate the exchange of information between national supervisory authorities and cooperate in providing advice on prudential regulation, ensuring the harmonization of regulatory frameworks as well as other policies, when it deems appropriate.

## **612. General Consultations**

1. Each Party may request consultations with respect to any matter arising under this Agreement that affects financial services. The other party shall favourably consider that request. The parties entitled to make available to the Committee the results of their consultations, during meetings of the Tribunal.
2. In consultations under this article shall include officials of the competent authorities of each party identified in annex 6.10.
3. Each Party may request that regulatory authorities of the other party participate in consultations under this article or to discuss measures of general application of that other party which may affect the operations of financial institutions or Financial Services service in the territory of the party requested that the consultations.
4. Nothing in this article shall be construed to require regulatory authorities participating in consultations to disclose information under paragraph 3 or to act in a manner that would interfere with specific matters regulatory supervision, administration and implementation of measures.
5. Where, for the purpose of monitoring, information concerning a Party may require a financial institution in the territory of the other party or on Financial Services service in the territory of another party, the party may have recourse to a regulatory authority responsible in the territory of the other party to seek the information.

## **613. New Financial Services and Data Processing**

1. Each Party shall permit a financial institution of the other party to provide any new financial service similar to those of a type that Party may provide for its financial institutions, in accordance with its legislation. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the same. Where such authorization is required, the decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.
2. Each Party shall allow a financial institutions of another Party to transfer, for processing information, within or outside the territory of the Party, using any means authorized therein when necessary for carrying out the business activities of such institutions.

## **614. Senior Management and Boards of Directors**

1. No party may require financial institutions of another party to recruit staff of any particular nationality to senior management positions of business or other charges.
2. No party may require that the Board of Directors or the board of directors of a financial institution of another Party be integrated by nationals of that Party, resident in its territory or a combination of the two.

## **615. Reservations**

1. One year after the Entry into Force of the Treaty, no party will increase the degree of inconsistency of its measures relating to Article 6.04, 6.05, 6.06, 6.07, 6.13 and 6.14, which shall be set out in section (a) Inconsistent existing measures of financial services (and annex).
2. Articles of the 6.04 6.07, 6.13 and 6.14 shall not apply to any measure that adopts or maintains a Party in accordance with section B (economic activities reserved for each party) in its schedule and to financial services (annex).
3. Any amendment to a measure inconsistent referred to in paragraph 1, does not decrease the level of conformity of the measure as it was in force immediately before the amendment.
4. Where a Party has set out a reservation to article 3.04, 3.05 on single stream comprehensive 3.08 4.03 4.04, or in its list of annexes (I), existing measures inconsistent LL (Economic activities reserved for each party) and (iii) exceptions from most-favoured-nation treatment, the reservation shall refer to article 6.04 To 6.07, 6.13 and 6.14 As the case may be, to the extent that the measure, sector and subsector activity or set out in the reservation covered by this chapter.

## **616. Future Liberalization**

With a view to achieving a progressively higher level of liberalisation, the parties undertake to conduct future negotiations,

at least every two (2) years, within the Council, aimed at eliminating remaining restrictions listed in accordance with article 7.10.

## **617. Denial of Benefits**

A Party may deny, partially or totally, the benefits of this chapter to a financial institution of the other party or a Financial Services Service of another party, subject to prior notification and consultation in accordance with Articles 6.10 and 6.12, where the party establishes that the service is being provided by an enterprise that has no substantial business activities in the territory of either party and who under the law of that Party that is owned or controlled by persons of a non- party.

## **618. Transfers**

1. Each Party shall permit all transfers relating to investments in its territory of an investor of the other party, to be made freely and without delay. Such transfers include:

- a) Profits, dividends, interests, capital gains, royalties, fees payments for administration, technical assistance and other fees; returns and other amounts in kind derived from the investment;
- b) Products derived from the sale or the total or partial liquidation of the investment;
- c) Payments made under a contract of which is a party to an investor or its investment;
- d) Payments made pursuant to Article 3.11; and
- e) Payments arising from the settlement of disputes between an investor and a party of the other party.

2. Each Party shall permit transfers to be made in a freely convertible currency at the rate of exchange prevailing on the date of transfer to spot transactions in the currency to be transferred without prejudice to article 8.04.

3. No party may require its investors to transfers carried out their profits or income, profits or other amounts derived from investments carried out in the territory of another party, or attributable to the same.

4. Notwithstanding paragraphs 1 and 2, each party may prevent a transfer through the equitable and non-discriminatory application of its laws in the following cases:

- a) Bankruptcy or insolvency or the protection of the rights of creditors;
- b) Issuance of securities, and trade operations;
- c) Criminal or administrative offences;
- d) Reports of transfers of currency or other monetary instruments; or
- e) Guarantee of compliance with the judgments in adjudicatory proceedings.

5. Notwithstanding paragraph 1, each party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under this chapter.

6. Each Party shall maintain laws and regulations to establish taxes on income and complementary through such means as the withholding tax applicable to dividends and other transfers, provided they are not discriminatory.

## **619. Disputes between an Investor and a Party**

1. Except as provided in this article, claims to make an investor litigants against a party in connection with the obligations under this Chapter shall be settled in accordance with section B of chapter 3.

2. Where the party against which the complaint has invoked any of the exceptions referred to in article 06.55, shall apply the following procedures:

- a) The Tribunal shall refer the matter to the Financial Services Committee for a decision. The Tribunal may not proceed pending receipt of a decision by the Committee under the terms of this article or within sixty (60) days from the date of receipt of the case by the Committee;
- b) Upon receipt of the Financial Services Committee shall decide on whether and to what extent the invoked article 06.55

exception is a valid defence to the claim of the investor and shall transmit a copy of its decision to the Tribunal and to the Council. Such decision shall be binding on the Tribunal.

## **620. Disputes between the Parties**

1. The Financial Services Committee shall be by consensus a list of fifteen (15) individuals, including three (3) Each party of persons who have the skills and necessary provisions to serve as arbitrators in disputes related to this chapter.

2. A complaining party may suspend benefits only in the financial services sector where an arbitral tribunal finds that a measure is inconsistent with the obligations of this chapter.

1. For purposes of this chapter, the regulatory authorities competent or responsible

Financial Services shall be:

a) In the case of Costa Rica, the Ministry of Foreign Trade or its successor, in consultation with the competent authority concerned (Central Bank of Costa Rica, the Superintendent of Financial Institutions, Superintendencia de Pensiones and Superintendencia de Valores);

b) For El Salvador: the Ministry of Economy, the Superintendency of the financial system, the Superintendency of Securities, the Superintendent of Pensions and the Reserve Bank, or their successors;

c) For Guatemala: the Ministry of Economy, the Monetary Authority, the Bank of Guatemala and the Superintendency of Banks, or their successors;

d) For Honduras: the Secretary of State in the Ministry of Trade and Industry, the Central Bank and the National Banking and Insurance Commission or their successors; and

e) For Nicaragua: the Ministry of Industry, Trade and Development, the Ministry of Finance and Public Credit, the Central Bank and the Superintendency of Banks, or their successors.

2. The principal representative of each Party shall where the relevant authority designated for such

Effect.

## **Chapter 7. Temporary Entry of Business Persons**

1. For purposes of this chapter:

Business activities: activities legitimate commercial nature established and operated in order to gain market. Does not include the possibility of obtaining employment and wages or remuneration from a source of employment in the territory of a party;

Labour: the certification procedure conducted by the competent administrative authority to determine whether a national of a party who seeks temporary entry to the territory of another party, displaces domestic labour force in the same sector or significantly affects the working conditions;

Temporary entry means business entry by a person of a Party in the territory of the other party without the intent to establish permanent residence or final;

National: a national "" as defined in article 2.01, but does not include a permanent residents or final;

National business means a person who is engaged in trade in goods or services or investment activities; and

Recurrent practice: a practice carried out by the immigration authorities in the form of a Party representative repetitive during a period immediately preceding and the implementation of the same.

2. For purposes of Annex 7.04:

Executive functions: those functions within an organization under which the business person is primarily the following responsibilities:

a) The direct management of the organization or a component or function within it;

b) Establishing the policies and objectives of the Organization, component or function; or



c) Receiving supervision or general direction from only executives in a higher level, the Board of Directors or the Administrative Council of the Organization or shareholders;

Managerial functions: those functions within an organization under which the business person is primarily the following 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 dismiss or to engage and recommend these actions, as well as other over the handling of personnel being directly supervised by that person and to perform functions within the Organization senior hierarchy or functions related to his position; or

d) Implementing actions under its discretion with regard to the daily operation of the over which this function

Everyone has the authority; and

Functions involving know-how: those functions involving a special knowledge of the goods, services, research, equipment, techniques and administration of the Organization or its interests and its implementation in international markets, or an advanced level of expertise or experience in processes and procedures of the Organization.

## **702. General Principles**

This chapter reflects the preferential trading relationship between the parties; the desirability of facilitating temporary entry in accordance with the principle of reciprocity and to establish transparent criteria and procedures for this purpose. It also reflects the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

1. Each Party shall apply its measures relating to the provisions of this chapter in accordance with article 0702 and in particular the apply expeditiously to avoid undue hardship or delay trade in goods or services or investment activities under this Treaty.

2. The Parties shall endeavour to develop and adopt common standards, definitions and interpretations for the implementation of this chapter.

1. In accordance with the provisions of this chapter including those contained in annexes 7.04 and 7.04 (1), each Party shall grant temporary entry to business persons who meet the other applicable measures relating to public health and safety and national security.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry adversely affecting:

a) The settlement of any labour dispute in progress at the place or intended to be used; or

b) The employment of any person who is involved in such dispute.

3. When a party refuses to issue an immigration document authorizing employment in accordance with paragraph 2, that Party:

a) It shall inform in writing the reasons for the refusal to the business person affected; and

b) Shall without delay and in writing of the reasons for the refusal to the Party in whose national refused entry.

4. Each Party shall limit the amount of fees for processing applications for temporary entry to the approximate cost of services rendered unless the parties have agreed in the past the elimination of those rights.

5. An authorization of temporary entry under this chapter does not replace the requirements needed to carry out a profession or activity according to the specific rules in force in the territory of the party authorizing the temporary entry.

1. In addition to the provisions of article 10.02, each Party shall:

a) The other party to provide information materials to know the measures relating to this chapter; and

b) No later than six (6) months after the date of Entry into Force of this Treaty; prepare and publish and make available in its own territory and in the other party, a consolidated document with materials explaining the requirements for temporary

entry under this chapter to know the business persons of the other party.

2. Each Party shall collect and maintain and make available to the other party information regarding the granting of temporary entry of authorisations under this chapter to the other party of business persons who have been issued immigration documentation. This compilation shall include information for each category authorised.

1. A Party may not initiate a dispute settlement procedure regarding a refusal of authorisation of temporary entry under this chapter or a particular case covered by article 0703, except that:

a) The case concerns a recurrent practice; and

b) The person affected business have exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1 (b) shall be deemed to be exhausted if the competent authority has issued a final decision within six (6) months from the start of the administrative procedure, and resolution is not attributable to delay caused by the business person.

## **707. Relationship to other Chapters**

Except as provided in this chapter, in chapters 2, and articles 9 and 11 10.02 and 10.01, 10.03, no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

## **Section A. Business Visitors**

1. Each Party shall grant temporary entry and supporting documentation to issue a business person seeking to carry out any business activity listed in the appendix 7.04 (a) (1), without requiring requirements other than those established by the existing immigration measures applicable to temporary entry; and if:

a) Proof of nationality of a party; and

b) The purpose of entry.

2. Each Party shall grant temporary entry on terms no less favourable than those provided for in the measures listed in appendix 7.04 (2) (a), to business persons seeking to carry out certain business activities other than those listed in the appendix to 7.04 (a) (1).

3. No party may:

a) Requiring as a condition for authorizing temporary entry under paragraph 1 or 2, prior approval procedures, requests, labour certification tests or other procedures of similar effect; or

b) A numerical restrictions impose or maintain temporary entry in accordance with paragraph 1 or 2.

4. Notwithstanding paragraph 3. a Party may require a business person seeking temporary entry under this section to obtain a visa prior to entry or equivalent document. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

## **Section B. Traders and Investors**

1. Each Party shall grant temporary entry issue and supporting documentation to the business person exercising oversight functions, executive or with expertise, provided that the person complies with existing immigration measures applicable to temporary entry and seeking to:

a) To carry out a substantial trade in goods or services principally between the Territory of the Party of which the person is a national business 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 administer an investment business to which the person or the business have committed or are in the process of committing a substantial amount of capital.

2. No party may:

a) Labour require certification tests or other procedures of similar effect as a condition for authorizing temporary entry under paragraph 1; or

b) Impose or maintain a 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 prior to entry or equivalent document. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

## **Section C.**

- Transfers of personal "within an enterprise

1. Each Party shall grant temporary entry and supporting documentation to issue a business person employed by an enterprise who seeks managerial functions, executive or involves specialized knowledge to that enterprise or a subsidiary or affiliate, provided that complies with existing immigration measures applicable to temporary entry. Each Party may require that the person to have been continuously employed by the Enterprise for six (6) months, within three (3) years immediately preceding the date of submission of the request.

2. No party may:

a) Labour require certification tests or other procedures of similar effect as a condition for authorizing temporary entry under paragraph 1; or

b) Impose or maintain a numerical restriction relating to temporary entry under paragraph 1.

Specific provisions for the temporary entry of business persons

1. It shall be considered that the business persons who enter under any of the categories set out in annex 7.04, activities that are useful or beneficial to the country.

2. The business persons who enter under any of the categories set out in annex 7.04, subject to the provisions contained in force.

3. The business persons who enter under any of the categories set out in annex 7.04 may not require permanent residence unless comply with existing immigration measures.

Appendix 7.04 (a) (1)

Business visitors

Research and design

- Technical, scientific and statistical researchers conducting independent research or for an enterprise established in the territory of the other party.

Cultivation, production and manufacturing

- Purchasing and production personnel, at managerial level, to undertake commercial operation for an enterprise established in the territory of the other party.

Marketing

- Market researchers and analysts conducting independent research or analysis for an enterprise established in the territory of the other party.

- Fairs and promotional personnel attending a trade conventions.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods and services for an enterprise established in the territory of the other party but not delivering goods or providing services.

- Procurement buyers make for an enterprise established in the territory of the other party.

Distribution

- Customs officers to provide advisory services to facilitate the import or export of goods.

#### After-sales services

- Staff of installation, maintenance and repair, with monitoring expertise essential to comply with the obligation of the seller; and to provide services, or train workers to provide such services pursuant to a warranty or other service contract related to the sale of commercial or industrial equipment or machinery, including software purchased for an enterprise established outside the territory of the temporary entry into which party is requested, during the life of the warranty or service agreement.

#### General services

- Consultants conducting business activities at the level of the cross-border provision of services.
- Management and supervisory personnel engaging in commercial operation for an enterprise established in the territory of the other party.
- Financial Services personnel to provide advice for an enterprise established in the territory of the other party.
- Staff of public relations and advertising to provide advice to customers or attending or participating in conventions.
- Tourism personnel (travel agents and tour guides, tourist or tour operators) attending or participating in conventions or lead any excursion has begun in the territory of the other party.
- Bus tour operators falling within the territory of a party:
  - a) With a group of passengers on a bus tour that has begun in the territory of the other party and to return to it;
  - b) To obtain a group of passengers on a bus tour that will develop, and mostly in the territory of the other party; or
  - c) With a group of passengers on a bus tour that is in the territory of the temporary entry into which party is requested, and return without passengers or with the Panel to transport it to the territory of another party.
- Translators and interpreters performing services as employees of a company established in the territory of the other party.

#### Appendix 7.04 (a) (2)

##### Existing immigration measures

In the case of Costa Rica:

The Migration and Aliens Act, Act No. 7033 of 4 August 1986 Titles II, III, IV, V, VII, VIII and X and regulation of the Migration and Aliens Act, Executive Decree number 19010 31 May 1989.

In the case of El Salvador:

- a) Migration, Law N ° Decreto Legislativo 2772 dated 19 December 1958, published in the Official Journal No. 240, I 181, dated 23 December 1958;
- b) Migration law regulations, Executive Decree No. 33 dated 9 March 1959, published in the Official Journal No. 56, I 182 dated 31 March 1959;
- c) Aliens Act, Legislative Decree No 299 dated 18 February 1986, published in the Official Journal No. 290 I, 34, dated 20 February 1986; and
- d) The agreement in Managua, signed at Managua, Nicaragua, on 22 April 1993 the CA-4 (agreements) in the area of migration facilitation and free movement of persons.

In the case of Guatemala:

- a) Congressional Decree No. 95-98 Migration Law, published in the Official Journal of Central America on 23 December 1998;
- b) Governmental Agreement No. 529-99, migration regulations, published in the Official Journal of Central America on 29 July 1999; and
- c) The agreement in Managua, signed at Managua, Nicaragua, on 22 April 1993 the CA-4 (agreements) in the area of migration facilitation and free movement of persons.

In the case of Honduras:

- a) Act of Population and Migration Policy Decree No. 34, published in the Diario "Official Gazette on 25 September 1970;
- b) No agreement on migration procedures 8 facilities to foreign investors and traders, published in the Diario "Official Gazette on 19 August 1998; and
- c) The agreement in Managua, signed at Managua, Nicaragua, on 22 April 1993 the CA-4 (agreements) in the area of migration facilitation and free movement of persons.

In the case of Nicaragua:

- a) Law No. 153 of 24 February 1993, published in the Diario "Official Gazette No 80 of 30 April 1993, chapter II, articles 7 to 40;
- b) Law No. 154 of 10 March 1993, published in the Diario "Official Gazette No 81 of 3 May 1993, article 13;
- c) Decree No. 628 Act, pensioners or persons resident in Nicaragua, published in the Official Gazette No 264 Diario "of 19 November 1974; and
- d) The agreement in Managua, signed at Managua, Nicaragua, on 22 April 1993 the CA-4 (agreements) in the area of migration facilitation and free movement of persons.

## **Part III. General Exceptions**

### **Chapter 8. Exceptions**

#### **801. Definitions**

For purposes of this chapter:

Tax convention means a convention for the avoidance of double taxation or other international agreement or arrangement

Tax;

The Fund: international Monetary Fund;

Payments for current international transactions means payments for international transactions

"flows, as defined in the Agreement Establishing the Fund;

International capital transactions means international capital transactions as defined in the Agreement Establishing the Fund; and

Transfers means international transactions and related international transfers and payments.

#### **802. General Exceptions**

This Treaty shall be incorporated into and form an integral part thereof, subparagraphs (a), (b) and (c) of article XIV of GATS and its amendments.

#### **803. Security National**

Nothing in this Treaty shall be construed as:

- a) To require a party to furnish or allow access to information the disclosure of which it considers contrary to its essential security interests;
- b) Prevent a Party from taking any action which it considers necessary to protect its essential security interests:
  - i) Relating to trade in arms, munitions and war materiel and trade operations and on goods, materials, technology and services undertaken directly or indirectly for the purpose of supplying a military establishment or other establishment of defence;
  - ii) Taken in time of war or other serious international tension or;

iii) With regard to the implementation of national policies or international agreements in the field of non-proliferation of nuclear weapons or other nuclear explosive devices; or

c) To prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

1. Nothing in this Treaty shall be construed as preventing a party from maintaining or adopting measures that restrict transfers where the party faces serious difficulties in their balance of payments, or threat thereof, provided that such restrictions are consistent with this article.

2. As soon as practicable after a party to apply a measure under this article, in accordance with the provisions of its international obligations, the Party:

a) Subject to revision of all restrictions on current account transactions in accordance with article VIII of the Articles of Agreement of the Fund;

b) Shall enter into consultations in good faith with the IMF on economic adjustment measures to address the fundamental underlying problems in the economic difficulties; and

c) Endeavour to adopt or maintain economic policies consistent with such consultations.

3. The measures that apply or maintain in accordance with this Article shall:

a) To avoid unnecessary damage to the economic, commercial or financial interests of another party;

b) Shall not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

c) Be temporary and phased out progressively as the situation improves the balance of payments;

d) Consistent with paragraph 2 (c) and with the Articles of Agreement of the Fund; and

e) Application of agreement with the most favourable, including the principles of National Treatment and most-favoured nation.

4. A Party may adopt or maintain a measure under this article that gives priority to services that are essential to its economic programme, provided that the Party does not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with paragraph 2 (c) and with article VIII (3) of the Articles of Agreement of the Fund.

5. Restrictions imposed on transfers:

a) Shall be consistent with article VIII (3) of the Articles of Agreement of the Fund, where they apply to payments for current international transactions;

b) Shall be consistent with article VI of the Articles of Agreement of the Fund and apply only in conjunction with measures on payments for current international transactions under paragraph 2 (a), where they apply to international capital transactions; and

c) May not take the form of surcharges, tariff quotas, licensing or similar measures.

## **805. Exceptions to Disclosure of Information**

Nothing in this Treaty shall be construed as requiring a party to furnish or allow access to information the disclosure of which would impede the enforcement or otherwise be contrary to the Constitution, to the public interest or their laws concerning the protection of the privacy of individuals, the accounts and financial affairs of individual customers of financial institutions.

1. Except as provided in this article nothing in this Agreement shall apply to Taxation Measures.

2. Nothing in this Agreement shall affect the rights and obligations of either party under any tax convention. In the event of incompatibility between any of these treaties and this treaty, they shall prevail to the extent of the inconsistency.

3. The Parties shall endeavour to conclude an agreement for the avoidance of double taxation within a reasonable time after the date of Entry into Force of this Treaty.

4. The parties agree that, together with the conclusion of an agreement for the avoidance of double taxation, exchange of letters setting out the relationship between the double taxation agreement and this Article.

# **Part IV. Institutional Arrangements**

## **Chapter 9. Administration of the Treaty**

### **901. Administration**

The management of this Treaty shall be responsible to the Council.

1. The Parties shall establish the Committee comprising officials referred to in annex 9.02 (1) or persons to whom they designate.
2. The Commission shall have the following functions:
  - a) Prepare and revise the technical files required for decisions within the framework of the Treaty;
  - b) Follow up on any decisions taken by the Council;
  - c) Supervise the work of the Committees;
  - d) Establishing working groups or standing or ad hoc expert groups and assign functions;
  - e) Consider any other matter that may affect the operation of this Treaty which is entrusted to it by the Council;
3. The Commission shall meet at any time upon the request of either party or when the Council considers it necessary to bring its reports to the Council.
  1. The committees shall be composed of representatives of each party and may authorise the participation of representatives of other institutions.
  2. The Committees shall meet at any time upon the request of either party or the Commission and shall make its recommendations in accordance with those instruments of the Central American Economic Integration.
  3. The Commission may establish committees, other than those set out in annex 9.03 or subcommittees as may be necessary to meet the various aspects related to this Treaty.

### **904. Functions of the Committees**

The Committee shall have the following functions:

- a) To monitor the implementation of the chapters of this treaty within its competence;
- b) Seek technical reports to the competent authorities for the purpose of contributing to resolve the matter;
- c) Evaluate and recommend to the Commission, to raise the Council proposals for amendments to the provisions of chapters of this treaty within its competence;
- d) The Commission to propose the review of measures in force or in a Party deems to be inconsistent with the obligations of this Treaty; and
- e) Comply with the other tasks entrusted to it by the Commission and the Council.

Officials of the Commission

For the purposes of article 9.02 Commission officials, are:

- a) In the case of Costa Rica, a representative of the Ministry of Foreign Trade or its successor;
- b) In the case of El Salvador, a representative of the Ministry of Economy, or its successor;
- c) In the case of Guatemala, a representative of the Ministry of Economy, or its successor;
- d) In the case of Honduras, a representative of the Ministry of Industry

And trade, or its successor; and

- e) In the case of Nicaragua, a representative of the Ministry of Development, Industry and Trade, or its successor.

Committee on cross-border investment and services (article 4.09).

Financial Services Committee (article 6.11).

## **Chapter 10. Transparency**

### **1001. Definitions**

For purposes of this chapter, "Administrative Ruling of general application,"

Administrative ruling or interpretation that applies to all persons and that fact situations

Generally fall within its scope, and that establishes a standard of conduct, but does not include:

- a) Orders or judgements in administrative procedures applicable to a person, in particular goods or service of another Party in a specific case; or
- b) A decision to deal with respect to a particular act or practice.

### **1002. Information Centre**

1. Each Party shall designate a branch or office as an information centre to facilitate communication between the parties on any matter covered by this Treaty.

2. When a party so requests, the Information Centre of the other party shall indicate the office or official

Responsible for the matter and provide the required support to facilitate communication with the requesting party.

### **1003. Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made available to the parties and to any interested person.

2. To the extent possible, each Party shall:

- a) It shall publish in advance any such measure that it proposes to adopt; and
- b) Provide interested persons and the other party a reasonable opportunity to comment on the measure (s) (S) proposal (s).

### **1004. Provision of Information**

1. Each Party shall notify the other party to the extent possible, any existing or proposed measure considers that it might affect or substantially affect the interests of the other party under the terms of this Treaty.

2. Each Party, at the request of the other Party shall provide information and respond promptly to questions

Relating to any existing or proposed measure.

3. Notification and provision of information referred to in this article shall be without prejudice to whether the measure is consistent with this Treaty.

### **1005. Guarantees of Audience, Legality and Due Process**

1. The parties reaffirm the hearing of the rule of law and due process embodied in their respective laws within the meaning of articles 10.06 10.07 hours; and

2. Each Party shall ensure that its judicial and administrative procedures concerning the implementation of any measure referred to in article 10.03 (1), that affects the provisions of this Treaty, conform to the essential elements of procedure, and is based substantiating the legal cause.

### **1006. Administrative Procedures for the Adoption of Measures of General Application**



With a view to administering in a manner consistent and impartial manner and all reasonable measures of implementation

General affecting aspects covered in this Treaty, each Party shall ensure that in its

Administrative procedures in the implementation of the measures referred to in article 10.03 (1)

With respect to persons, in particular goods or services of the other party in specific cases that:

- a) Wherever possible, the persons of the other party that are directly affected by a proceeding are in accordance with the internal rules, reasonable notice of the initiation of the same, including a description of the nature, a statement of the legal authority to which it may initiate and a general description of any issues in controversy;
- b) When the time, the nature of the proceeding and the public interest, permit such persons a reasonable opportunity to present facts and arguments in support of their claims, prior to any final administrative action; and
- c) Its procedures are in accordance with its legislation.

## **1007. Review and Challenge**

1. Each Party shall maintain judicial tribunals or procedures of administrative nature to

The purpose of the prompt review and, where warranted, the correction of final administrative actions regarding matters covered by this Treaty. Such tribunals shall be impartial and shall not be linked with the office or authority entrusted with administrative and enforcement shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, before such tribunals or procedures the parties have the right to:

- a) A reasonable opportunity to defend or support their respective positions; and
- b) A decision based on the evidence and arguments presented by the same.

3. Each Party shall ensure that, with respect to the avoidance or subsequent review to which it would apply in accordance with its legislation, these resolutions are implemented by the offices or authorities.

## **1008. Communications and Notifications**

1. For purposes of this Treaty, all notifications or communications addressed to a Party or by a Party shall be made through its national section of the secretariat, report succinctly of this fact to national sections of the other parties.
2. Notwithstanding paragraph 1, in the case of a notification or communication made in accordance with the law applicable to the subject of dispute settlement under this Treaty, a copy thereof shall be sent to the Secretariat of Economic Integration (SIECA), for the purpose of filing.
3. Except as otherwise provided, shall be delivered a communication or notification by one party from the date of its receipt by the national section of the secretariat of that Party.

# **Chapter 11. Final Provisions**

## **1101. Evaluation of the Treaty**

The Parties shall regularly assess the development of this Treaty with a view to seeking their development and consolidate the integration process in the region; promoting the active participation of the productive sectors.

## **1102. Amendments**

1. Without prejudice to articles 9.02 11.04 and any amendment to this Treaty shall require the agreement of all the parties.
2. The agreed amendments shall enter into force after approval according to the appropriate legal procedures of the Parties and constitute an integral part of this Treaty.

## **1103. Reservations**

This Treaty shall not be subject to reservations or unilateral interpretative declarations.

## **1104. Duration**

This Treaty shall have indefinite duration and shall enter into force thirty (30) days after the date of deposit of the instrument of ratification, for the first two (2) depositors, and on the other, eight (8) days after the date of deposit of its instrument.

## **1105. Denunciation**

1. This instrument may be denounced by one of the Parties denounces it shall take effect one hundred and eighty (180) days of its presentation to the SICA without prejudice to that the parties may agree on a different period.
2. The treaty is in force between the parties, other stay attached to it, at least two of them.

## **1106. Deposit**

The SICA shall be the depositary of this Treaty, which shall transmit certified copies to the ministries of each Contracting State, the Ministry of Foreign Trade of Costa Rica and the Secretariat of Economic Integration (SIECA). Furthermore, they shall immediately notify the deposit of each instrument of ratification. Upon the Entry into Force of this Treaty, SICA shall send a certified copy thereof to the General Secretariat of the United Nations organization for the purposes of the registration of marks Article 102 of the Charter of this Organization.

## **1107. Annexes**

The annexes to this Agreement constitute an integral part of it.

## **1108. Exchange of Reservations**

1. The Parties shall agree on their lists of reservations set out in annex I, II, III referred to in articles 3.09 4.06 and of Chapters 3 and 4, and to undertake exchange no later than six (6) months from the date of signing of this Treaty.
2. For the purpose of progress in the implementation of the commitments set out in paragraph 1, the parties shall submit a preliminary list of existing measures dissenting by<sup>31</sup> within a period of four (4) months from the date of signing of this Treaty.
3. The lists of reservations shall enter into force for each Party, eight (8) days after the deposit of SICA.

## **1109. Replacement**

The present Treaty replaced in all the parties to the Treaty on investment and trade in services

Between the Republics of El Salvador and Guatemala, signed in Guatemala City, Republic of Guatemala on 13 January 2000.

Miguel Angel Rodríguez President of the Republic of Costa Rica

Francisco Guillermo Flores Pérez President of the Republic of El Salvador

President Alfonso Portillo Cabrera OF THE REPUBLIC OF GUATEMALA

Ricardo Maduro Joest President of the Republic of Honduras

Enrique Bolaños Geyer President of the Republic of Nicaragua