

# **Agreement between the Government of the United States of America and the Government of the Kingdom of Bahrain on the Establishment of a Free Trade Area**

The Government of the United States of America and the Government of the Kingdom of Bahrain (the "Parties"),

Recognizing the strong bonds of friendship between them and wishing to strengthen their economic relations;

Recognizing that open and competitive markets are key drivers of economic efficiency, innovation, and growth;

Desiring to create new employment opportunities and raise the standard of living for their citizens by liberalizing and expanding trade between them;

Desiring to enhance the competitiveness of their enterprises in global markets;

Desiring to establish clear and mutually advantageous rules governing their trade, complementing the high standards for protection of investment established by the Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment;

Building on their rights and obligations under the WTO Agreement and other agreements to which they are both parties;

Affirming their commitment to transparency and their desire to eliminate bribery and corruption in international trade and investment;

Desiring to foster creativity and innovation, improve technology, and enhance the protection and enforcement of intellectual property rights;

Desiring to protect, enhance, and enforce basic workers' rights and to strengthen the development and enforcement of labor laws and policies;

Desiring to strengthen the development and enforcement of environmental laws and policies, promote sustainable development, and implement this Agreement in a manner consistent with the objectives of environmental protection and conservation;

Affirming their desire to establish an expanded free trade area in the Middle East and thereby contribute to economic liberalization and development in the region;

Have agreed as follows:

## **Chapter One. Initial Provisions and Definitions**

### **Section A. Initial Provisions**

#### **Article 1.1. Establishment of a Free Trade Area**

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

#### **Article 1.2. Relation to other Agreements**

1. Each Party affirms its existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

2. This Agreement shall not be construed to derogate from any legal obligation between the Parties that entitles goods or services, or suppliers of goods or services, to treatment more favorable than that accorded by this Agreement.

## **Section B. General Definitions**

### **Article 1.3. Definitions**

For purposes of this Agreement, unless otherwise specified:

**Agreement on Textiles and Clothing** means the Agreement on Textiles and Clothing, contained in Annex 1A to the WTO Agreement;

**Bahrain** means the Kingdom of Bahrain;

**BIT investment** means "covered investment" as defined in Article 1(e) of the Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment, signed at Washington on September 29, 1999;

**central level of government** means:

(a) for Bahrain, the government of Bahrain; and (b)

for the United States, the federal level of government;

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

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

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

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

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

**days** means calendar days as reckoned according to the Gregorian calendar;

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

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

**existing** means, with respect to a measure, in effect on the date of entry into force of this Agreement;

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

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

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

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

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

**national** means:

(a) with respect to Bahrain, any individual possessing Bahraini citizenship in accordance with the laws in force in Bahrain; and

(b) with respect to the United States, "national of the United States" as defined in Title III of the Immigration and Nationality Act; originating good means a good qualifying under the rules of origin set out in Chapter Four (Rules of Origin) or Chapter Three (Textiles and Apparel);

**person** means a natural person or enterprise;

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

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

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

**regional level of government** means:

(a) for Bahrain, "regional level of government" is not applicable; and

(b) for the United States, a state of the United States, the District of Columbia, or Puerto Rico;

**Safeguards Agreement** means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;

**SPS Agreement** means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

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

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

**territory** means:

(a) with respect to Bahrain, the territory of Bahrain as well as the maritime areas, seabed, and subsoil over which Bahrain exercises, in accordance with international law, sovereignty, sovereign rights, and jurisdiction;

(b) with respect to the United States,

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

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

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

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

**WTO** means the World Trade Organization; and

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

## **Chapter Two. National Treatment and Market Access for Goods**

### **Article 2.1. Scope and Coverage**

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

### **Section A. National Treatment**

#### **Article 2.2. National Treatment**

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government,

treatment no less favorable than the most favorable treatment that regional level government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

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

## **Section B. Tariff Elimination**

### **Article 2.3. Tariff Elimination**

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

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

3. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-B. An agreement by the Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 2-B for that good when approved by each Party in accordance with its applicable legal procedures.

4. For greater certainty, a Party may: (a) raise a customs duty back to the level established in its Schedule to Annex 2-B following a unilateral reduction; or (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

## **Section C. Special Regimes**

### **Article 2.4. Waiver of Customs Duties**

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

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

### **Article 2.5. Temporary Admission of Goods**

1. Each Party shall grant duty-free temporary admission for:

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

(b) goods intended for display or demonstration;

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

(d) goods imported for sports purposes, regardless of their origin.

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

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

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

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

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

(d) be capable of identification when exported;

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

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

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

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good.

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

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

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

8. Subject to Chapter Ten (Cross-Border Trade in Services):

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

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

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

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

## **Article 2.6. Goods Re-entered after Repair or Alteration**

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

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

3. For purposes of this Article, repair or alteration means restoration, renovation, cleaning, resterilizing, or other operation or process that does not:

(a) destroy a good's essential characteristics or create a new or commercially different good; or

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

## **Article 2.7. Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials**

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

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

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and

that neither such materials nor packets form part of a larger consignment.

## **Section D. Non-tariff Measures**

### **Article 2.8. Import and Export Restrictions**

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

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

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

(b) measures conditioning the grant of an import license on the fulfillment of a performance requirement; or

(c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the WTO Agreement on Subsidies and Countervailing Measures and Article 8.1 of the WTO Agreement on Implementation of Article VI of GATT 1994.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

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

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

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, and distribution arrangements in the other Party. 5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 2-A.

(1) For greater certainty, paragraph 1 applies to prohibitions or restrictions on the importation of remanufactured products.

### **Article 2.9. Administrative Fees and Formalities**

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

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

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

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

### **Article 2.10. Export Taxes**

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

## **Section E. Agriculture**

## Article 2.11. Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.
2. Except as provided in paragraph 3, neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.
3. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any export subsidy to exports of such good to the territory of the importing Party. (2)

(2) For greater certainty, each Party confirms that any measure that it adopts pursuant to this paragraph shall be consistent with the WTO Agreement.

## Article 2.12. Definitions

For purposes of this Chapter:

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

**agricultural goods** means those goods referred to in Article 2 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

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

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

**consumed** means

(a) actually consumed; or

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

**duty-free** means free of customs duty;

**export subsidies** means "export subsidies" as defined in Article 1(e) of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement, including any amendment of that article;

**goods imported for sports purposes** means sports requisites for use in sports contests, demonstrations, or training in the territory of the importing Party;

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

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

**performance requirement** means a requirement that:

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

- (b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;
  - (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;
  - (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
  - (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;
- but does not include a requirement that:
- (f) an imported good be subsequently exported;
  - (g) an imported good be used as a material in the production of another good that is subsequently exported;
  - (h) an imported good be substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or
  - (i) an imported good be substituted by an identical or similar good that is subsequently exported; and

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

## Chapter Three. Textiles and Apparel

### Article 3.1. Bilateral Emergency Action

1. If, as a result of the reduction or elimination of a duty under this Agreement, a textile or apparel good benefiting from preferential tariff treatment is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

- (a) the most-favored-nation ("MFN") applied rate of duty in effect at the time the action is taken; and
- (b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

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

- (a) shall examine the effect of increased imports of the good from the exporting Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which shall necessarily be decisive; and
- (b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may take an emergency action under this Article only following an investigation by its competent authorities.

4. The importing Party shall deliver to the exporting Party, without delay, written notice of its intent to take emergency action and, on the request of the exporting Party, shall enter into consultations with that Party regarding the matter.

5. An importing Party:

- (a) shall not maintain an emergency action for a period exceeding three years;
- (b) shall not take or maintain an emergency action against a good beyond ten years after the Party must eliminate customs

duties on that good pursuant to this Agreement;

(c) shall not take an emergency action more than once against the same good of the other Party; and

(d) shall, on termination of the emergency action, apply to the good that was subject to the emergency action the rate of duty that would have been in effect but for the action.

6. The importing Party shall provide to the exporting Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties agree otherwise. If the Parties are unable to agree on compensation, the exporting Party may suspend tariff concessions under this Agreement having trade effects substantially equivalent to the trade effects of the emergency action. Such tariff action may be taken against any goods of the importing Party. The exporting Party shall apply the tariff action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

7. Nothing in this Agreement shall be construed to limit a Party's right to restrain imports of textile and apparel goods in a manner consistent with the Agreement on Textiles and Clothing or the Safeguards Agreement. However, a Party may not take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a safeguard measure that a Party takes pursuant to either such agreement.

## **Article 3.2. Rules of Origin and Related Matters**

### *Application of Chapter Four*

1. Except as provided in this Chapter, including its Annexes, Chapter Four (Rules of Origin) applies to textile and apparel goods.

2. For greater certainty, the rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

### *Consultations*

3. On the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties.

4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.

5. The Parties shall endeavor to conclude consultations within 60 days after delivery of a request. If the Parties agree in the consultations to revise a rule of origin, the agreement shall supersede that rule of origin when approved by the Parties in accordance with Article 21.2 (Amendments).

### *De Minimis*

6. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-A, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. Notwithstanding the preceding sentence, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

### *Treatment of Sets*

7. Notwithstanding the specific rules of origin set out in Annex 3-A, textile or apparel goods classified under General Rule of Interpretation 3 of the Harmonized System as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties. Preferential Tariff

## Treatment for Certain Non-Originating Textile and Apparel Goods

8. Subject to paragraph 9, each Party shall accord preferential tariff treatment to the following goods, if they meet the applicable conditions for preferential tariff treatment under this Agreement other than the condition that they be originating goods:

(a) cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the Harmonized System that are wholly formed in the territory of a Party from yarn produced or obtained outside the territory of a Party;

(b) cotton or man-made fiber fabric goods provided for in Annex 3-B that are wholly formed in the territory of a Party from yarn spun in the territory of a Party from fiber produced or obtained outside the territory of a Party;

(c) cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the Harmonized System that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of a Party from fabric or yarn produced or obtained outside the territory of a Party; and

(d) cotton or man-made fiber made-up goods provided for in Chapter 63 that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of a Party from fabric wholly formed in a Party from yarn produced or obtained outside the territory of a Party.

9. The treatment described in paragraph 8 shall be limited to goods imported into the territory of a Party up to an annual total quantity of 65 million square meters equivalent in each of the first ten years after entry into force of this Agreement. Upon the request of an exporting Party, the importing Party shall allocate such quantity among the four categories of goods described in paragraph 8, in accordance with such request. To determine the quantity in square meters equivalent that is charged against the annual quantity, the importing Party shall apply the conversion factors listed in the Correlation: U.S. Textile and Apparel Category System with the Harmonized Tariff Schedule of the United States of America ("The Textile Correlation"), 2003, U.S. Department of Commerce, Office of Textiles and Apparel, or successor publication.

10. At the written request of an exporting Party, an importing Party shall require an importer claiming preferential tariff treatment under paragraph 8 to submit to the importing Party a certificate of eligibility. An importing Party shall not accept such a claim unless the certificate of eligibility is properly completed and signed by an authorized official of the exporting Party and is presented at the time the preferential tariff treatment is claimed.

11. Where an importing Party has reason to question the accuracy of a claim under paragraph 8, or where an importing Party seeks such information in the course of a verification under Article 3.3, it may require an importer claiming preferential tariff treatment for a textile or apparel good under paragraph 8 to prepare, sign, and submit to its competent authority a declaration supporting such a claim for preferential tariff treatment and to provide all pertinent information concerning the production of the good, including:

(a) a description of the good, quantity, invoice numbers, and bills of lading;

(b) a description of the operations performed in the production of the good in the territory of one or both of the Parties;

(c) a reference to the specific provision of paragraph 8 that forms the basis for the claim for preferential tariff treatment; and

(d) a statement as to any fiber, yarn, or fabric of a non-Party and the origin of such materials used in the production of the good. The importing Party may require the importer to retain all documents relied upon to prepare the declaration for a period of five years.

## Article 3.3. Customs Cooperation

1. The Parties shall cooperate for purposes of:

(a) enforcing or assisting in the enforcement of their measures affecting trade in textile or apparel goods;

(b) verifying the accuracy of claims of origin;

(c) enforcing or assisting in the enforcement of measures implementing international agreements affecting trade in textile or apparel goods; and

(d) preventing circumvention of international agreements affecting trade in textile or apparel goods.

2. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the

importing Party to determine that a claim of origin for a textile or apparel good is accurate. The exporting Party shall conduct such a verification, regardless of whether an importer claims preferential tariff treatment for the good. The exporting Party also may conduct such a verification on its own initiative.

3. Where the importing Party has a reasonable suspicion that an exporter or producer of the exporting Party is engaging in unlawful activity relating to trade in textile or apparel goods, the exporting Party shall conduct, on the request of the importing Party, a verification for purposes of enabling the importing Party to determine that the exporter or producer is complying with applicable customs measures regarding trade in textile or apparel goods, including measures that the exporting Party adopts and maintains pursuant to this Agreement and measures of either Party implementing other international agreements affecting trade in textile or apparel goods, or to determine that a claim of origin regarding textile or apparel goods exported or produced by that enterprise is accurate. For purposes of this paragraph, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information of the type set forth in Article 5.5 (Cooperation) or information that indicates:

(a) circumvention by the exporter or producer of applicable customs measures regarding trade in textile or apparel goods, including measures adopted to implement this Agreement; or

(b) conduct that facilitates the violation of measures relating to any other international agreement regarding trade in textile or apparel goods.

4. The exporting Party, through its competent authorities, shall permit the importing Party, through its competent authorities, to assist in a verification conducted pursuant to paragraph 2 or 3, including by conducting, along with the competent authorities of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of a textile or apparel good from the territory of the exporting Party to the territory of the importing Party. If an exporter, producer, or other enterprise refuses to consent to a visit by the competent authorities of the importing Party, the importing Party may consider that the verification cannot be completed and the determination described in paragraph 2 or 3 cannot be made and may take appropriate action as described in paragraph 8.

5. Each Party shall provide to the other Party, consistent with the Party's law, production, trade, and transit documents and other information necessary for the exporting Party to conduct a verification under paragraph 2 or 3. Each Party shall treat any documents or information exchanged in the course of such a verification in accordance with Article 5.6 (Confidentiality).

6. While a verification is being conducted, the importing Party may, consistent with its law, take appropriate action, which may include suspending the application of preferential tariff treatment to:

(a) the textile or apparel good for which a claim of origin has been made, in the case of a verification under paragraph 2; or

(b) any textile or apparel good exported or produced by the person subject to a verification under paragraph 3, where the reasonable suspicion of unlawful activity relates to that good.

7. The Party conducting a verification under paragraph 2 or 3 shall provide the other Party with a written report on the results of the verification, which shall include all documents and facts supporting any conclusion that the Party reaches.

8. (a) If the importing Party is unable to make the determination described in paragraph 2 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action, including denying preferential tariff treatment to the textile or apparel good subject to the verification, and to similar goods exported or produced by the person that exported or produced the good.

(b) If the importing Party is unable to make a determination described in paragraph 3 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action, including denying preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification.

9. (a) The importing Party may deny preferential tariff treatment or entry under paragraph 8 only after notifying the other Party of its intention to do so. (b) If the importing Party takes action under paragraph 8 because it is unable to make a determination described in paragraph 2 or 3, it may continue to take appropriate action under paragraph 8 until it receives information sufficient to enable it to make the determination.

10. On the request of either Party, the Parties shall consult to resolve any technical or interpretive difficulties that may arise under this Article or to discuss ways to improve the effectiveness of their cooperative efforts. In addition, either Party may request technical or other assistance from the other Party in implementing this Article. The Party receiving such a request shall make every effort to respond favorably and promptly.

## Article 3.4. Definitions

For purposes of this Chapter:

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

**exporting Party** means the Party from whose territory a textile or apparel good is exported;

**importing Party** means the Party into whose territory a textile or apparel good is imported; and

**textile or apparel good** means a good listed in the Annex to the Agreement on Textiles and Clothing.

## Chapter Four. Rules of Origin

### Article 4.1. Originating Goods

Except as otherwise provided in this Chapter or Chapter Three (Textiles and Apparel), each Party shall provide that a good is an originating good where it is imported directly from the territory of one Party into the territory of other Party, and,

- (a) it is a good wholly the growth, product, or manufacture of one or both of the Parties; or
- (b) for goods other than those covered by the rules in Annex 3-A or Annex 4-A, the good is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties; and the sum of (i) the value of materials produced in the territory of one or both of the Parties, plus (ii) the direct costs of processing operations performed in the territory of one or both of the Parties is not less than 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or
- (c) for goods covered by the rules in Annex 3-A or Annex 4-A, the good has satisfied the requirements specified in that Annex.

### Article 4.2. New or Different Article of Commerce

For purposes of this Chapter, new or different article of commerce means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one of both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed.

### Article 4.3. Non-qualifying Operations

Each Party shall provide that, for purposes of Article 4.1, no good shall be considered a new or different article of commerce by virtue of having merely undergone (a) simple combining or packaging operations or (b) mere dilution with water or with another substance that does not materially alter the characteristics of the good.

### Article 4.4. Cumulation

1. Each Party shall provide that direct costs of processing operations performed in the territory of one or both of the Parties as well as the value of materials produced in the territory of one or both of the Parties may be counted without limitation toward satisfying the 35 percent value-content requirement specified in Article 4.1(b).
2. Each Party shall provide that an originating good or a material produced in the territory of one or both of the Parties, incorporated into a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.
3. Each Party shall provide that a good shall originate where the good is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.1 and all other applicable requirements in this Chapter or Chapter Three (Textiles and Apparel).

### Article 4.5. Value of Materials

1. For purposes of this Chapter, each Party shall provide that the value of a material produced in the territory of one or both of the Parties includes:

- (a) the price actually paid or payable by the producer of the good for the material;
- (b) when not included in the price actually paid or payable by the producer of the good for the material, the freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant;
- (c) the cost of waste or spoilage, less the value of recoverable scrap; and
- (d) taxes or customs duties imposed on the material by one or both of the Parties, provided the taxes or customs duties are not remitted upon exportation.

2. Each Party shall provide that where the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, or where paragraph 1 is otherwise not applicable, the value of the material produced in the territory of one or both of the Parties includes:

- (a) all expenses incurred in the growth, production, or manufacture of the material, including general expenses;
- (b) a reasonable amount for profit; and
- (c) freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

#### **Article 4.6. Direct Costs of Processing Operations**

1. For purposes of this Chapter, direct costs of processing operations means those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good. Such costs include the following, to the extent that they are includable in the appraised value of goods imported into the territory of a Party:

- (a) all actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;
- (b) tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;
- (c) research, development, design, engineering, and blueprint costs to the extent that they are allocable to the specific good;
- (d) costs of inspecting and testing the specific good; and
- (e) costs of packaging the specific good for export to the territory of the other Party.

2. For greater certainty, those items that are not included as direct costs of processing operations are those that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include:

- (a) profit; and
- (b) general expenses of doing business that are either not allocable to the specific good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

#### **Article 4.7. Packaging and Packing Materials and Containers for Retail Sale and for Shipment**

Each Party shall provide that packaging and packing materials and containers in which a good is packaged for retail sale and for shipment, if classified with the good, shall be disregarded in determining whether the good qualifies as an originating good, except that the value of originating packaging and packing materials and containers may be counted toward satisfying, where applicable, the 35 percent value-content requirement specified in Article 4.1(b).

#### **Article 4.8. Indirect Materials**

Each Party shall provide that indirect materials shall be disregarded in determining whether the good qualifies as an originating good, except that the cost of such indirect materials may be counted toward satisfying the 35 percent value-content requirement where applicable.

#### **Article 4.9. Transit and Transshipment**

For purposes of this Chapter, a good shall not be considered to be imported directly from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party.

## **Article 4.10. Importer Requirements**

Each Party shall provide that whenever an importer makes a claim for preferential tariff treatment, the importer:

- (a) shall be deemed to have certified that such good qualifies for preferential tariff treatment; and
- (b) shall submit to the customs authorities of the importing Party, upon request, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Each Party may require that the information on the declaration should contain at least the following pertinent details:
  - (i) a description of the good, quantity, invoice numbers, and bills of lading;
  - (ii) a description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;
  - (iii) a description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;
  - (iv) a description of the operations performed on, and a statement as to the origin and value of, any foreign materials used in the good that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in the territory of one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in Annex 3-A or Annex 4-A; and
  - (v) a description of the origin and value of any foreign materials used in the good that are not claimed to have been substantially transformed in the territory of one or both of the Parties, or are not claimed to have undergone an applicable change in tariff classification specified in Annex 3-A or Annex 4-A.

The importing Party should request a declaration only when that Party has reason to question the accuracy of a deemed certification referred to in subparagraph (a), when that Party's risk assessment procedures indicate that verification of a claim is appropriate, or when the Party conducts a random verification. The importer shall retain the information necessary for the preparation of the declaration for five years from the date of importation of the good.

## **Article 4.11. Obligations Relating to Importation**

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party possesses information indicating that the importer's claim fails to comply with any requirement under this Chapter or Chapter Three (Textiles and Apparel).
2. To determine whether a good imported into its territory qualifies for preferential tariff treatment, the importing Party may, through its customs authority, verify the origin.
3. Where a Party denies a claim for preferential tariff treatment, it shall issue a written determination containing findings of fact and the legal basis for its determination. The Party shall issue the determination within a period established under its law.
4. Nothing in this Article shall prevent a Party from taking action under Article 3.3 (Customs Cooperation).

## **Article 4.12. Consultations and Modifications**

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner, in accordance with the objectives of this Agreement.
2. The Parties may establish ad hoc working groups, or a subcommittee of the Joint Committee established pursuant to Article 18.2 (Joint Committee), to consider any matter related to this Chapter (including Annex 4-A). On request of a Party, the Parties may direct a working group or subcommittee to review operation of this Chapter (including Annex 4-A) and develop recommendations for amendments in the light of any pertinent developments, including changes in technology and production processes, and other relevant factors.

## Article 4.13. Regional Cumulation

At a time to be determined by the Parties, and in the light of their desire to promote regional integration, the Parties shall enter into discussions with a view to deciding the extent to which materials that are products of countries in the region may be counted for purposes of satisfying the origin requirement under this Agreement as a step toward achieving regional integration.

## Article 4.14. Definitions

For purposes of this Chapter:

**foreign material** means a material other than a material produced in the territory of one or both of the Parties;

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

**goods wholly the growth, product, or manufacture of one or both of the Parties** means goods consisting entirely of one or more of the following:

- (a) mineral goods extracted in the territory of one or both of the Parties;
- (b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;
- (c) live animals born and raised in the territory of one or both of the Parties;
- (d) goods obtained from live animals raised in the territory of one or both of the Parties;
- (e) goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;
- (f) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (g) goods produced on board factory ships from the goods referred to in subparagraph (f) provided such factory ships are registered or recorded with that Party and fly its flag;
- (h) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;
- (j) waste and scrap derived from:
  - (i) production or manufacture in the territory of one or both of the Parties, or
  - (ii) used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;
  - (k) recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and
  - (l) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

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

- (a) fuel and energy;
- (b) tools, dies, and molds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a

good or used to operate equipment and buildings;

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

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

(g) catalysts and solvents; and

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

**material** means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

**material produced in the territory of one or both of the Parties** means a good that is either wholly the growth, product, or manufacture of one or both of the Parties or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

**recovered goods** means materials in the form of individual parts that are the result of: (1) the complete disassembly of used goods into individual parts; and (2) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

**remanufactured goods** means industrial goods assembled in the territory of a Party that: (1) are entirely or partially comprised of recovered goods; (2) have similar life expectancies and meet similar performance standards as new goods; and (3) enjoy similar factory warranties as such new goods;

**simple combining or packaging operations** means operations such as adding batteries to devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

**substantially transformed** means, with respect to a good or material, changed as the result of a manufacturing or processing operation where: (1) the good or material has multiple uses and is converted into a good or material with limited uses; (2) the physical properties of the good or material are changed to a significant extent; or (3) the operation undergone by the good or material is complex in terms of the number of different processes and materials involved, as well as the time and level of skill required to perform these processes; and the good or material loses its separate identity in the resulting, new good or material.

## Chapter Five. Customs Administration

### Article 5.1. Publication

1. Each Party shall publish its customs laws, regulations, and administrative procedures on the Internet.
2. Each Party shall designate one or more inquiry points to address inquiries from interested persons concerning customs matters and shall make available on the Internet information concerning procedures for making such inquiries.
3. Further to Article 17.1.2 (Publication), each Party shall, to the extent possible, publish in advance any regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment on such proposed regulations prior to their adoption.

### Article 5.2. Release of Goods

Each Party shall:

- (a) adopt or maintain procedures providing for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival, provided that necessary data submission requirements are fulfilled;
- (b) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without interim transfer to warehouses or other locations;
- (c) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes, and fees, and as part of such procedures may require an importer to provide sufficient guarantee in the form of a surety or other appropriate instrument to ensure payment of any

customs duties, taxes, and fees that may ultimately be assessed; and

(d) otherwise endeavor to adopt or maintain simplified procedures for the release of goods.

### **Article 5.3. Automation**

Each Party's customs authority shall: (a) endeavor to use information technology that expedites procedures for the importation of goods; and (b) in deciding on the information technology to be used for this purpose, take into account international standards.

### **Article 5.4. Risk Assessment**

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.

### **Article 5.5. Cooperation**

1. Each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy regarding the implementation of its customs laws that is likely to substantially affect the operation of this Agreement.

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

(a) the implementation and operation of the provisions of this Agreement relating to the importation of goods, including Chapter Four (Rules of Origin) and this Chapter;

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

(c) restrictions or prohibitions on imports or exports; or (d) such other matters relating to the importation or exportation of goods as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importation, the Party may request that the other Party provide specific confidential information that pertains to that activity and that is normally collected by the other Party in connection with the importation of goods. The Party shall make its request in writing, shall identify the requested information with specificity sufficient to enable the other Party to locate it, and shall specify the purposes for which the information is sought.

4. The other Party shall respond by providing any information that it has collected that is material to the request.

5. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources, including:

(a) historical evidence that a specific importer, exporter, producer, or other enterprise involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with a Party's laws or regulations governing importation;

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

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

6. Each Party shall endeavor to provide the other Party with any other information that would assist in determining whether imports from or exports to the territory of the other Party are in compliance with the other Party's laws and regulations governing importation, in particular those related to the prevention of unlawful shipments.

7. The United States shall endeavor to provide Bahrain with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing technical skills, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importation.

8. Building on the procedures established in this Article, the Parties shall use best efforts to explore additional means of cooperation to enhance each Party's ability to enforce its laws and regulations governing importation, including by:

(a) endeavoring to conclude a mutual assistance agreement between their respective customs authorities within six months after the date of entry into force of this Agreement; and

(b) considering whether to establish additional channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on customs issues.

## **Article 5.6. Confidentiality**

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

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

3. Each Party shall adopt or maintain procedures that protect confidential information submitted in connection with the administration of its customs laws and regulations from unauthorized disclosure, including information the disclosure of which could prejudice the competitive position of the person providing the information.

## **Article 5.7. Express Shipments**

Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, including procedures:

(a) that, to the extent possible, allow the information necessary for the release of express shipments to be submitted electronically;

(b) in which the information necessary for the release of an express shipment may be submitted, and processed by the Party's customs authority, before the shipment arrives;

(c) allowing a shipper to submit a single manifest covering all goods contained in an express shipment;

(d) that, to the extent possible, minimize the documentation required for the release of express shipments; and

(e) that, under normal circumstances, allow for an express shipment that has arrived at a point of importation to be released no later than six hours after the submission of the information necessary for release.

## **Article 5.8. Review and Appeal**

Each Party shall ensure that with respect to a determination of the Party on customs matters, the importer in its territory has access to:

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

(b) judicial review of the determination.

## **Article 5.9. Penalties**

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative, and, where appropriate, criminal sanctions for violations of its customs laws, including its laws governing tariff classification, customs valuation, country of origin, and the entitlement to preferential tariff treatment.

## **Article 5.10. Advance Rulings**

1. Each Party, through its customs authority, shall issue written advance rulings prior to the importation of a good into its territory at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, on the basis of the facts and circumstances set forth by the requester, concerning:

(a) tariff classification;

(b) the application of customs valuation criteria, including the criteria in the Customs Valuation Agreement;

(c) duty drawback;

(d) whether a good qualifies as an originating good; and (e) whether a good qualifies for duty-free treatment in accordance with Article 2.6 (Goods Re-entered After Repair or Alteration).

2. Each Party shall provide that its customs authority shall issue advance rulings within 150 days of a request, provided that the requester has submitted all necessary information.

3. Each Party shall provide that advance rulings shall be valid from their date of issuance, or such other date specified by the ruling, for at least three years, provided that the facts and circumstances (including laws and regulations) on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling when facts or circumstances warrant, such as where the information on which the ruling is based is false or inaccurate.

5. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.

6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its law.

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

8. For purposes of this Article, advance ruling means a written response by a Party to a request made in accordance with this Article, setting forth the official position of the Party on the interpretation of its relevant laws and regulations pertaining to a matter referenced in paragraph 1(a) through (e), as applied to a specific, prospective customs transaction.

9. This Article shall apply to Bahrain beginning two years after the date of entry into force of this Agreement.

## **Article 5.11. Technical Cooperation and Implementation**

1. Within 120 days after the date of entry into force of this Agreement, the Parties shall consult and establish a work program on procedures that Bahrain may adopt to implement Article 5.10 and shall consult on technical assistance that the United States may provide to assist Bahrain in that endeavor.

2. Not later than 18 months after the date of entry into force of this Agreement, the Parties shall consult on Bahrain's progress in implementing Article 5.10 and on whether to undertake further cooperative activities.

## **Chapter Six. Sanitary and Phytosanitary Measures**

### **Article 6.1. Objectives**

The objectives of this Chapter are to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties implementation of the SPS Agreement, and provide a forum for addressing sanitary and phytosanitary matters.

### **Article 6.2. Scope and Coverage**

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

### **Article 6.3. General Provisions**

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

2. The Parties affirm their desire to provide a forum for addressing sanitary and phytosanitary matters affecting trade between the Parties, through the Joint Committee established pursuant to Article 18.2 (Joint Committee) or a subcommittee established thereunder.

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

### **Article 6.4. Definition**

For purposes of this Chapter:

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

## **Chapter Seven. Technical Barriers to Trade**

### **Article 7.1. Scope and Coverage**

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

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

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

(b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

### **Article 7.2. Affirmation of the Wto Agreement on Technical Barriers to Trade**

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

### **Article 7.3. International Standards**

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

### **Article 7.4. Trade Facilitation**

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

### **Article 7.5. Conformity Assessment Procedures**

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

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

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

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

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

(e) the importing Party may rely on a supplier's declaration of conformity. The Parties shall intensify their exchange of information on these and similar mechanisms.

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

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the

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

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

## **Article 7.6. Transparency**

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

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

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

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

(b) transmit the proposal electronically to the other Party through the inquiry point the Party has established in accordance with Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement; and

(c) publish, preferably by electronic means, or otherwise make available to the public its responses to significant comments it receives from the public or the other Party on the proposed technical regulation or conformity assessment procedure no later than the date it publishes the final technical regulation or conformity assessment procedure. Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for the public and the other Party to provide comments in writing on the proposal.

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

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

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

## **Article 7.7. Tbt Chapter Coordinators**

1. The TBT Chapter Coordinators designated in Annex 7-A shall work jointly to facilitate implementation of this Chapter and cooperation between the Parties on matters pertaining to this Chapter. The Coordinators shall:

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

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

(c) enhance cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;

(d) where appropriate, facilitate sectoral cooperation between governmental and non-governmental conformity assessment bodies in the Parties' territories;

(e) facilitate consideration of any sector-specific proposal a Party makes for further cooperation under this Chapter;

(f) exchange information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations, and conformity assessment procedures;

(g) on request of a Party, consult on any matter arising under this Chapter; (h) review this Chapter in light of any developments under the TBT Agreement and develop recommendations for amendments to this Chapter in light of those developments; and (i) take any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between them. In carrying out its functions, each Party's TBT Chapter Coordinator shall coordinate with interested parties in its territory.

2. The Parties' TBT Chapter Coordinators shall communicate with each other by any method they agree is appropriate and shall meet as they agree is necessary.

## **Article 7.8. Information Exchange**

Where a Party requests the other Party to provide information pursuant to this Chapter, the requested Party shall provide it within a reasonable period of time and, if possible, by electronic means.

## **Article 7.9. Definitions**

For purposes of this Chapter, **technical regulation, standard, conformity assessment procedures, non-governmental body and central government body** have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

# **Chapter Eight. Safeguards**

## **Article 8.1. Application of a Safeguard Measure**

If as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of
  - (i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken, and
  - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

## **Article 8.2. Conditions and Limitations**

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance of applying a safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

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

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

4. Neither Party may apply a safeguard measure against a good:

- (a) except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
- (b) for a period exceeding three years; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party.

5. Neither Party may apply a safeguard measure more than once against the same good.

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

7. On the termination of the safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-B (Tariff Elimination), would have been in effect but for the measure.

### Article 8.3. Compensation

A Party applying a safeguard measure shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation within 30 days from the date the Party announces a decision to apply the measure, the other Party may take tariff action having trade effects substantially equivalent to the safeguard measure. The Party shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and, in any event, only while the safeguard measure is being applied.

### Article 8.4. Global Safeguard Actions

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement.

### Article 8.5. Definitions

For purposes of this Chapter:

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

**safeguard measure** means a measure described in Article 8.1;

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

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

**threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and transition period means the ten-year period following entry into force of this Agreement.

## Chapter Nine. Government Procurement

### Article 9.1. Scope and Coverage

#### *Application of Chapter*

1. This Chapter applies to any measure regarding covered procurement.

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

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

(b) for which the value, as estimated in accordance with paragraphs 5 and 6, as appropriate, equals or exceeds the relevant threshold specified in Annex 9-F;

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

(d) that is not excluded from coverage by this Agreement.

3. This Chapter does not apply to:

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

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

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

(d) any good or service component of a contract to be awarded by an entity that is not listed in Annex 9-A-1 or 9-A-2; and (e) the procurement of transportation services that form a part of, or are incidental to, a procurement covered by this Chapter.

#### *Compliance*

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

#### *Valuation*

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

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter;

(b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract, and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and

(c) without prejudice to paragraph 6, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

6. In the case of procurement by lease or rental or procurement that does not specify a total price, the basis for estimating the value of the procurement shall be, with respect to:

(a) a fixed-term contract, (i) where the term is 12 months or less, the total estimated contract value for the contract's duration, or (ii) where the term exceeds 12 months, the total estimated contract value, including the estimated residual value; or

(b) a contract for an indefinite period, the estimated monthly installment multiplied by 48. Where there is doubt as to whether the contract is to be a fixed-term contract, a procuring entity shall use the basis for estimating the value of the procurement described in this subparagraph.

## **Article 9.2. General Principles**

#### *National Treatment and Non-Discrimination*

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

2. A procuring entity of a Party may not:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor

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

#### *Rules of Origin*

3. For purposes of procurement covered by this Chapter, neither Party may apply rules of origin to goods imported from the other Party that are different from the rules of origin the Party applies in the normal course of trade to imports of the same goods from the other Party.

#### *Offsets*

4. A procuring entity may not seek, take account of, impose, or enforce offsets in the qualification and selection of suppliers, goods, or services, in the evaluation of tenders, or in the award of contracts, before or in the course of a covered procurement.

#### *Measures Not Specific to Procurement*

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

### **Article 9.3. Publication of Procurement Measures**

1. Each Party shall promptly publish laws, regulations, judicial decisions, administrative rulings of general application, and procedures regarding covered procurements, and any changes to such measures, in officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public.

2. Each Party shall, on request by the other Party, promptly provide an explanation relating to any such measure to the requesting Party.

### **Article 9.4. Publication of Notice of Intended Procurement and Notice of Planned Procurement**

#### *Notice of Intended Procurement*

1. For each covered procurement, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") or, where appropriate, applications for participation in the procurement. The notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering.

2. A procuring entity shall include the following information in each notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement;

(b) a description of the procurement and any conditions for participation;

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

(d) the procurement method that will be used; and

(e) the address and the time limit for the submission of tenders, and, where appropriate, any time limit for the submission of an application for participation in a procurement.

#### *Notice of Planned Procurement*

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year a notice regarding the procuring entity's procurement plans. The notice should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Where the notice is published in accordance with Article 9.5.2(a), a procuring entity may apply Article 9.5.2 for the purpose of establishing shorter time limits for tendering for covered procurements.

### **Article 9.5. Time Limits for Tendering Process**

1. A procuring entity shall prescribe time limits for tendering that allow suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. Except as provided for in paragraphs 2 and 3, a procuring entity shall provide no less than 40 days from the date of publication of a notice of intended procurement to the deadline for submission of tenders.

2. Under the following circumstances, a procuring entity may establish a time limit for tendering that is less than 40 days, provided that such time limit is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than ten days:

(a) where the entity has published a separate notice, including a notice of planned procurement under Article 9.4.3, at least

40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement; the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement; and the address from which documents relating to the procurement may be obtained;

(b) where the entity procures commercial goods or services, except that the procuring entity may not rely on this provision if it requires suppliers to satisfy conditions for participation; or

(c) in duly substantiated cases of extreme urgency brought about by events unforeseeable by the procuring entity, such that a 40-day deadline would result in serious adverse consequences to the entity or the relevant Party.

3. When a procuring entity publishes a notice of intended procurement in accordance with Article 9.4 in an electronic medium, the procuring entity may reduce the time limit for submission of a tender or an application for participation in a procurement by up to five days. In no case shall the procuring entity reduce either time limit to less than ten days from the date on which the notice of intended procurement is published.

4. A procuring entity shall require all participating suppliers to submit tenders by a common deadline. For greater certainty, this requirement also applies where: (a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limit for qualification or tendering procedures; or (b) negotiations are terminated and suppliers are permitted to submit new tenders.

## **Article 9.6. Information on Intended Procurements**

### *Tender Documentation*

1. A procuring entity shall provide to any interested supplier tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature, scope, and, where quantifiable, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certifications, plans, drawings, or instructional materials;

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

(c) all criteria, including all cost factors, to be considered in awarding the contract, and the relative importance of such criteria;

(d) the date, time, and place for the opening of tenders; and

(e) any other terms or conditions, including terms of payment, relating to the procurement.

2. A procuring entity shall promptly:

(a) provide, on request, the tender documentation to any supplier participating in the procurement; and

(b) reply to any reasonable request for relevant information by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.

### *Technical Specifications*

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

4. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:

(a) specify the technical specification, wherever appropriate, in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose more burdens than the use of a government-unique standard.

5. A procuring entity may not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or

intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

6. A procuring entity may not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or to protect the environment. Modifications

8. If, during the course of a procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit all such modifications or amended or re-issued notice or tender documentation:

(a) to all the suppliers that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and

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

## **Article 9.7. Conditions for Participation**

### *General Requirements*

1. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall, subject to the other provisions of this Chapter:

(a) limit any conditions for participation to those that are essential to ensure that the supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;

(b) evaluate the financial, commercial, and technical abilities of a supplier on the basis of its global business activities, including both its activities in the territory of the Party of the supplier, as well as its activities, if any, in the territory of the Party of the procuring entity, and may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party;

(c) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation; and

(d) allow all suppliers that satisfy the conditions for participation to participate in the procurement.

2. Nothing in this Article shall preclude a procuring entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.

3. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers adequate time to prepare and submit responsive applications and for the entity to evaluate and make its determination based on such applications.

### *Multi-Use Lists*

4. A procuring entity may establish a multi-use list provided that the entity annually publishes in a paper or electronic medium, or otherwise makes available continuously in electronic form, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods or services that may be procured using the list;

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

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the date on which use of the list will terminate, or where a date is not provided, an indication of the method by which advance notice will be given of the termination of use of the list;

- (e) any deadlines for submission of applications for inclusion on the list; and
- (f) an indication that the list may be used for procurement covered by this Chapter.

5. A procuring entity that maintains a multi-use list shall allow suppliers to apply at any time for inclusion on the list and shall include on the list all suppliers that apply and satisfy the conditions for participation within a reasonably short time after a supplier applies.

#### *Information on Procuring Entity Decisions*

6. Where a supplier applies for participation in a covered procurement, or for inclusion on a multi-use list, a procuring entity shall promptly advise such supplier of its decision with respect to its application.
7. Where a procuring entity rejects an application for participation in a covered procurement or for inclusion on a multi-use list, or ceases to recognize a supplier as having satisfied the conditions for participation, the entity shall promptly inform the supplier and, on request of such supplier, promptly provide the supplier a written explanation of the reasons for its decision.

## **Article 9.8. Tendering Procedures**

1. A procuring entity shall conduct procurement covered by this Agreement in a manner that is consistent with this Chapter, and, except where specifically provided otherwise in this Chapter, in a transparent and impartial manner and shall permit any interested supplier to submit a tender.

2. Provided that the tendering procedure is not used to avoid competition, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, a procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 9.4 through 9.7 and 9.9.1 through 9.9.6 in any of the following circumstances:

(a) where, in response to a prior notice of intended procurement or invitation to tender,

(i) no tenders were submitted;

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

(iii) no suppliers satisfied the conditions for participation;

and the entity does not substantially modify the essential requirements of the procurement or the conditions for participation;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist because:

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

(ii) the procuring entity is obligated to protect patents, copyrights, or other exclusive rights, or proprietary information; or

(iii) there is an absence of competition for technical reasons;

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

(d) for goods purchased on a commodity market;

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

(f) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time under procedures consistent with Articles 9.4 through 9.7, and the use of such procedures would result in serious injury to the procuring entity or the relevant Party.

3. For each contract awarded under paragraph 2, a procuring entity shall prepare a written report that includes the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and

conditions described in paragraph 2 that justify the use of a limited tendering procedure.

## **Article 9.9. Treatment of Tenders and Awarding of Contracts**

### *Receipt and Opening of Tenders*

1. A procuring entity or relevant authority shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. A procuring entity or relevant authority shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity or relevant authority.
3. Where a procuring entity or relevant authority provides suppliers with opportunities to correct, or concur in the correction of, unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity or relevant authority shall provide the same opportunities to all participating suppliers.

### *Awarding of Contracts*

4. A procuring entity or relevant authority shall require that, in order to be considered for award, a tender:
  - (a) be submitted in writing by a supplier that has satisfied any conditions for participation; and
  - (b) at the time of opening, conform to the essential requirements and evaluation criteria specified in the notices and tender documentation.
5. Unless a procuring entity or relevant authority determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity or authority has determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender determined to be the most advantageous solely on the basis of the requirements and evaluation criteria set out in the notices and tender documentation.
6. A procuring entity or relevant authority may not cancel a procurement, or terminate or modify a contract it has awarded, so as to circumvent the obligations of this Chapter.

### *Information Provided to Suppliers*

7. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. Subject to Article 9.13, a procuring entity, on request of a supplier whose tender was not selected for award, shall provide the supplier the reasons for not selecting its tender and the relative advantages of the tender selected.

### *Publication of Award Information*

8. Not later than 60 days after the award of a contract for a covered procurement, a procuring entity or relevant authority shall publish a notice in an officially designated publication, which may be in an electronic or paper medium.

The notice shall include at least the following information about the contract:

- (a) the name and address of the procuring entity;
- (b) a description of the goods or services procured;
- (c) the date of award;
- (d) the name and address of the successful supplier;
- (e) the contract value; and
- (f) the procurement method used and, in cases where a procedure has been used pursuant to Article 9.8.2, a description of the circumstances justifying the procedure used.

### *Provision of Information to the Other Party*

9. On request of the other Party, a Party shall provide information on the tender and evaluation procedures used in the conduct of a covered procurement sufficient to demonstrate that the particular procurement was conducted fairly, impartially, and in accordance with this Chapter. Such information shall include information on the characteristics and relative advantages of the successful tender and on the contract price.

10. A procuring entity or relevant authority shall maintain records and reports of tendering procedures relating to covered procurements, including the reports required by Article 9.8.3, for at least three years after the date a contract is awarded.

## **Article 9.10. Ensuring Integrity In Procurement Practices**

Further to Article 17.5 (Anti-Corruption), each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has determined to have engaged in fraudulent or illegal actions in relation to procurement. On request of the other Party, a Party shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

## **Article 9.11. Domestic Review of Supplier Challenges**

1. Each Party shall provide timely, effective, transparent, and predictable means for a supplier to challenge the conduct of a covered procurement, without prejudice to that supplier's participation in ongoing or future procurement activities. Each Party shall ensure that its review procedures are made publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.
2. Each Party shall establish or designate at least one impartial authority that is independent of the procuring entity that is the subject of the challenge to receive and review challenges that suppliers submit in connection with any covered procurement.
3. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.
4. Each Party shall authorize the authority that it establishes or designates under paragraph 2 to take prompt interim measures, pending the resolution of a challenge, to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded. However, in deciding whether to apply an interim measure, each Party may take into account any overriding adverse consequences to the public interest if an interim measure were taken. If a Party decides not to apply an interim measure, it shall provide a written explanation of the grounds for its decision.
5. Each Party shall ensure that the authority that it establishes or designates under paragraph 2 conducts its review in accordance with the following:
  - (a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known or reasonably should have become known to the supplier;
  - (b) the procuring entity shall be required to respond in writing to the supplier's challenge and provide all relevant documents to the authority;
  - (c) the supplier that initiates the challenge shall be provided an opportunity to reply to the procuring entity's response before the authority makes a decision on the challenge; and
  - (d) the authority shall promptly provide decisions relating to a supplier's challenge in writing, with an explanation of the grounds for each decision.

## **Article 9.12. Modifications and Rectifications to Coverage**

1. Either Party may modify its coverage under this Chapter provided that it:
  - (a) notifies the other Party in writing and the other Party does not object in writing within 30 days after the notification; and
  - (b) within 30 days after notifying the other Party, offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing before the modification, except as provided in paragraphs 2 and 3.
2. Either Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedule to Annex 9-A-1 or 9-A-2, provided that it notifies the other Party in writing and that the other Party does not object in writing within 30 days after the notification. A Party that makes such a rectification or minor amendment need not

offer compensatory adjustments to the other Party.

3. A Party need not offer compensatory adjustments where the Parties agree that the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence. Where the Parties do not agree that government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Joint Committee established under Chapter Eighteen (Administration of the Agreement) shall adopt any agreed modification, technical rectification, or minor amendment made in accordance with paragraph 1 or 2.

### **Article 9.13. Non-disclosure of Information**

1. A Party, including its procuring entities, shall not disclose information that is designated as confidential or that is by nature confidential, without the authorization of the persons providing the information. This includes information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers.

2. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, to provide confidential information the disclosure of which would:

(a) impede law enforcement;

(b) prejudice fair competition between suppliers;

(c) prejudice the legitimate commercial interests of particular suppliers or persons, including the protection of intellectual property; or

(e) otherwise be contrary to the public interest.

### **Article 9.14. Exceptions**

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order, or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

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

### **Article 9.15. Definitions**

For purposes of this Chapter:

**build-operate-transfer contract and public works concession contract** mean any contractual arrangement, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works, and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership of or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

**commercial goods and services** means goods and services of a type of goods and services that are sold or offered for sale to, and customarily purchased by, nongovernmental buyers for non-governmental purposes; it includes goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

**conditions for participation** means registration, qualification and other prerequisites for participation in a procurement;

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

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

**offsets** means any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts;

**procurement official** means any person who performs procurement functions;

**procuring entity** means an entity listed in Annex 9-A-1 or 9-A-2;

**relevant authority** means any authority authorized by a Party to conduct any aspect of a procurement; services includes construction services, unless otherwise specified;

**supplier** means a person that provides or could provide goods or services to a procuring entity; and technical specification means a tendering requirement that:

(a) sets out the characteristics of:

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

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

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

## Chapter Ten. Cross-border Trade In Services

### Article 10.1. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale, and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service; and

(d) the provision of a bond or other form of financial security as a condition for the supply of a service.

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

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

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

3. Articles 10.4, 10.7, and 10.8 also apply to measures by a Party affecting the supply of a service in its territory by a BIT investment.

4. This Chapter does not apply to:

(a) financial services as defined in Article 11.21 (Financial Services, Definitions), except that paragraph 3 shall apply where the service is supplied by a BIT investment that is not a BIT investment in a financial institution (as defined in Article 11.21 (Financial Services, Definitions)) in the Party's territory;

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and

(ii) specialty air services;

(c) procurement; or

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

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party. A service supplied in the exercise of governmental authority means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

## **Article 10.2. National Treatment**

1. Each Party shall accord to service suppliers of the other Party treatment no less favorable than it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

## **Article 10.3. Most-favored-nation Treatment**

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party.

## **Article 10.4. Market Access**

1. Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

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

(iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (1) or

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

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(1) This clause does not cover measures of a Party that limit inputs for the supply of services.

## **Article 10.5. Local Presence**

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

## **Article 10.6. Non-conforming Measures**

1. Articles 10.2, 10.3, 10.4, and 10.5 do not apply to: (a) any existing non-conforming measure that is maintained by a Party at: (i) the central level of government, as set out by that Party in its Schedule to Annex I; (ii) a regional level of government, as

set out by that Party in its Schedule to Annex I; or (iii) a local level of government; (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.2, 10.3, 10.4, or 10.5.

2. Articles 10.2, 10.3, 10.4, and 10.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II. 3. Annex 10-A sets out specific commitments by the Parties.

## **Article 10.7. Domestic Regulation**

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 10.6.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect for both Parties, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

## **Article 10.8. Transparency In Development and Application of Regulations (2)**

Further to Chapter 17 (Transparency):

1. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter.

2. If a Party does not provide advance notice of and opportunity for comment on proposed regulations relating to the subject matter of this Chapter pursuant to Article 17.1 (Publication), it shall, to the extent possible, address in writing the reasons therefore.

3. At the time it adopts final regulations relating to the subject matter of this Chapter, a Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent possible, each Party shall allow reasonable time between publication of final regulations relating to the subject matter of this Chapter and their effective date.

(2) The Parties understand that "regulations" includes regulations establishing or applying to licensing authorization or criteria.

## **Article 10.9. Mutual Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, including the other Party and non-Parties. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 10.3 shall be

construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. Neither Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 10-B applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

## **Article 10.10. Transfers and Payments**

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer or payment through the equitable, non-discriminatory, and good faith application of its law relating to:

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

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

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

(d) criminal or penal offenses; or

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

## **Article 10.11. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to Article 19.5 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise that has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

## **Article 10.12. Implementation**

The Parties shall meet annually, and as otherwise agreed, on any issues or questions of mutual interest arising from the implementation of this Chapter.

## **Article 10.13. Definitions**

For purposes of this Chapter:

**cross-border trade in services** or **cross-border supply of services** means the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
  - (b) in the territory of one Party by a person of that Party to a person of the other Party; or
  - (c) by a national of a Party in the territory of the other Party;
- but does not include the supply of a service in the territory of a Party by a BIT investment;

**enterprise** means an enterprise as defined in Article 1.3 (Definitions), and a branch of an enterprise;

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

**professional services** means services, the supply of which requires specialized postsecondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by tradespersons or vessel and aircraft crew members;

**service supplier** means a person that seeks to supply or supplies a service (3); and

**specialty air services** means any non-transportation air services, such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(3) The Parties understand that for the purposes of Articles 10.2 and 10.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of GATS.

## **ANNEX 10-A. Express delivery services**

1. For purposes of this Agreement, express delivery services means the collection, transport, and delivery of documents, printed matter, parcels, goods, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (1) air transport services, (2) services supplied in the exercise of government authority, and (3) maritime transport services. (4)
2. The Parties confirm their desire to maintain at least the level of open market access for express delivery services existing on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.
3. Each Party shall ensure that, where a Party's monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Party's obligations under Articles 10.2, 10.3, or 10.4. The Parties also reaffirm their obligations under Article VIII of GATS.
4. Each Party confirms that it has no intention to direct revenues derived from the supply of postal monopoly services to confer an advantage to its own or any other competitive supplier of express delivery services.

(4) For greater certainty, for the United States, "express delivery services" do not include delivery of letters subject to the Private Express Statutes (18 U.S.C. 1693 et seq., 39 U.S.C. 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

## **ANNEX 10-B. Professional services**

### *Development of Professional Standards*

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers and to provide recommendations on mutual recognition to the Joint Committee established under Chapter Eighteen (Administration of the Agreement).
2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:
  - (a) education - accreditation of schools or academic programs;

- (b) examinations - qualifying examinations for licensing;
- (c) experience - length and nature of experience required for licensing;
- (d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
- (e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;
- (f) scope of practice - extent of, or limitations on, permissible activities;
- (g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and
- (h) consumer protection - including alternatives to residency requirements, such as bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Joint Committee shall review the recommendation within a reasonable period to determine whether it is consistent with this Agreement. Based on the Joint Committee's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

#### *Temporary Licensing*

4. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.

#### *Review*

5. The Joint Committee shall, at least once every three years, review the implementation of this Annex.

## **Chapter Eleven. Financial Services**

### **Article 11.1. Scope and Coverage**

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

- (a) financial institutions of the other Party; and
- (b) cross-border trade in financial services.

2. Chapter Ten (Cross-Border Trade in Services) applies to measures described in Paragraph 1 only to the extent that such Chapter or an Article of such Chapter is incorporated into this Chapter.

(a) Article 10.11 (Denial of Benefits) is hereby incorporated into and made a part of this Chapter.

(b) Article 10.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 11.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

- (a) activities or services forming part of a public retirement plan or statutory system of social security; or
- (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

### **Article 11.2. National Treatment**

1. Each Party shall accord to financial institutions of the other Party treatment no less favorable than that it accords to its own financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions.

2. For purposes of the national treatment obligations in Article 11.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

### **Article 11.3. Most-favored-nation Treatment**

1. Each Party shall accord to financial institutions of the other Party and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

### **Article 11.4. Market Access for Financial Institutions**

Neither Party may adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

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

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (1) or

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

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

(1) This clause does not cover measures of a Party that limit inputs for the supply of financial services.

### **Article 11.5. Cross-border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 11-A.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

## **Article 11.6. New Financial Services (2)**

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the new financial service does not require the Party to adopt a new law or modify an existing law.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

(2) The Parties understand that nothing in Article 11.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 11.6.

## **Article 11.7. Treatment of Certain Information**

Article 20.4 (Disclosure of Information) does not apply to this Chapter. Nothing in this Chapter shall be construed to require a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

## **Article 11.8. Senior Management and Boards of Directors**

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

## **Article 11.9. Non-conforming Measures**

1. Articles 11.2 through 11.5 and 11.8 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex III;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex III; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, or 11.8. (3)

2. Annex 11-B sets out certain specific commitments by each Party.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), or 10.4 (Market Access) does not apply shall be treated as a nonconforming measure to which Article 11.2, 11.3, or 11.4, as the case may be, does not apply, to the extent that the

measure, sector, sub-sector, or activity set out in the Schedule of non-conforming measures is covered by this Chapter.

(3) For greater certainty, Article 11.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 11.5.

## **Article 11.10. Exceptions**

1. Notwithstanding any other provision of this Chapter or Chapters Twelve (Telecommunications) or Thirteen (Electronic Commerce), including specifically Article 12.16 (Relationship to Other Chapters), and in addition Article 10.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party, neither Party shall be prevented from adopting or maintaining measures for prudential reasons, (4) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters Twelve (Telecommunications) or Thirteen (Electronic Commerce), including specifically Article 12.16 (Relationship to Other Chapters), and in addition Article 10.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party, applies to nondiscriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.10 (Transfers and Payments).

3. Notwithstanding Article 10.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on financial institutions of the other Party or cross-border trade in financial services, as covered by this Chapter.

(4) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

## **Article 11.11. Transparency**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's market. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 17.1 (Publication), each Party shall, to the extent practicable,

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

3. At the time it adopts final regulations of general application relating to the subject matter of this Chapter, each Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between publication of such final regulations and their

effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application relating to the subject matter of this Chapter.

7. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

## **Article 11.12. Self-regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to a self-regulatory organization to provide a financial service in or into its territory, the Party shall ensure observance of the obligations of Articles 11.2 and 11.3 by such self-regulatory organization.

## **Article 11.13. Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

## **Article 11.14. Domestic Regulation**

Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

## **Article 11.15. Expedited Availability of Insurance Services**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

## **Article 11.16. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to a financial institution of the other Party that is a BIT investment of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or the financial institution.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to a financial institution of the other Party that is a BIT investment of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

## **Article 11.17. Information Requirements**

Notwithstanding Articles 11.2 and 11.3, a Party may require a financial institution of the other Party to provide information concerning the financial institution solely for informational or statistical purposes. The Party shall protect any business information that is confidential from any disclosure that would prejudice the competitive position of the financial institution. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Article 11.18. Financial Services Subcommittee**

1. The Parties hereby establish a Financial Services Subcommittee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 11-D.
2. The Subcommittee shall: (a) supervise the implementation of this Chapter and its further elaboration; and (b) consider issues regarding financial services that are referred to it by a Party.
3. The Subcommittee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Subcommittee shall inform the Joint Committee established under Chapter Eighteen (Administration) of the results of each meeting.

## **Article 11.19. Consultations**

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Financial Services Subcommittee.
2. Consultations under this Article shall include officials of the authorities specified in Annex 11-D.

## **Article 11.20. Dispute Settlement**

1. Chapter Nineteen (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. When a Party claims that a dispute arises under this Chapter, Article 19.7 (Establishment of Panel) shall apply, except that:
  - (a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3;
  - (b) in any other case, (i) each Party may select panelists meeting the qualifications set out in paragraph 3 or Article 19.7.4 (Establishment of Panel), and (ii) if the Party complained against invokes Article 11.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties agree otherwise.
3. Financial services panelists shall:
  - (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
  - (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment; and
  - (c) meet the qualifications set out in Article 19.7.4(b) and (c) (Establishment of Panel).
4. Notwithstanding Article 19.11 (Non-Implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:
  - (a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
  - (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

## **Article 11.21. Definitions**

For purposes of this Chapter:

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

**cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party,
- (b) in the territory of one Party by a person of that Party to a person of the other Party, or
- (c) by a national of one Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investor of the other Party, or a BIT investment, in a financial institution of the other Party;

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (a) Direct insurance (including co-insurance):
  - (i) life,
  - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

*Banking and other financial services (excluding insurance)*

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;
- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (i) money market instruments (including checks, bills, certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products including, but not limited to, futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (v) transferable securities;
  - (vi) other negotiable instruments and financial assets, including bullion;

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

(l) Money broking;

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

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

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

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

**financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of a Party, that seeks to make, is making, or has made a BIT investment in a financial institution in the territory of the other Party;

**new financial service** means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

**person of a Party** means "person of a Party" as defined in Article 1.3 (Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

**self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

## **ANNEX 11-A. Cross-border trade**

### *Insurance and insurance-related services*

#### **United States**

1. For the United States, Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of crossborder supply of financial services in Article 11.21 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service.

2. For the United States, Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of crossborder supply of financial services in Article 11.21 with respect to insurance services.

#### **Bahrain**

1. For Bahrain, Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 11.21 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service in Article 11.21; and

(d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service, with respect to the types of insurance risks covered in subparagraph (a) and (b).

2. For Bahrain, Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 11.21 with respect to insurance services.

3. Bahrain's commitments pursuant to subparagraph 1(a)(i), and brokerage of such risks, shall apply one year after the entry into force of this Agreement, or when Bahrain has implemented the necessary amendments in its relevant legislation, whichever occurs earlier.

#### *Banking and other financial services (excluding insurance)*

Each Party shall undertake the obligations of Article 11.5.1 with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service in Article 11.21, and advisory and other auxiliary services, excluding intermediation, as referred to in subparagraph (p) of the definition of financial service.

## **ANNEX 11-B. Specific commitments**

#### *Expedited Availability of Insurance*

The Parties understand that Bahrain requires prior product approval before the introduction of new insurance products. The Bahrain Monetary Agency (BMA) shall provide that once an enterprise seeking approval for insurance products files all the required information with the BMA, the BMA shall grant approval or issue disapproval according to its regulations for the sale of the new product within 60 days. The Parties understand that the BMA does not maintain any limitations on the number or frequency of new product introductions.

#### *Portfolio Management*

1. A Party shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Article 11.1 and to the provisions of Article 11.5.3.

2. For purposes of paragraph 1, collective investment scheme means:

(a) for Bahrain, a "scheme" as defined in Circular No. OG/356/92 dated November 18, 1992, regarding the Regulation with Respect to the General Supervision, Operation, and Marketing of Collective Investment Schemes; and

(b) for the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

#### *New Financial Services*

In addition to Bahrain's commitment to allow a new financial service to be supplied consistent with Article 11.6, Bahrain undertakes to consult with the United States, on request, in circumstances where an application by a financial institution of the United States to supply a new service has been denied. Insurance

1. In the context of Bahrain's review of the regulatory framework for the insurance sector, Bahrain shall ensure that any laws, regulations, and rules that are developed as a result of the review will treat enterprises of the United States on a non-

discriminatory basis, subject only to any relevant non-conforming measures listed in Bahrain's Schedule to Annex III.

2. Bahrain shall ensure that insurance suppliers established in the territory of Bahrain prior to the date of signature of this Agreement are allowed to maintain the scope of their business activities in existence on that date, as well as any increase in the scope of such business activities authorized prior to the date of entry into force of this Agreement. For greater certainty, this paragraph shall not be construed to prevent Bahrain from applying future non-discriminatory prudential measures to such suppliers.

## **ANNEX 11-C. Self-regulatory organizations**

The Parties recognize that certain requirements of the Bahrain Stock Exchange are not consistent with the obligations of Articles 11.2 and 11.3. Bahrain shall ensure that, no later than 24 months from the date of entry into force of this Agreement, self-regulatory organizations in Bahrain will modify their regulations, including those dealing with requirements for broker/dealers, in order to bring them into compliance with these obligations. Until that time, Bahrain confirms that U.S. financial institutions established in Bahrain will be granted membership in and allowed to operate on the Bahrain Stock Exchange, provided that they meet applicable requirements maintained by the Exchange.

## **ANNEX 11-D. Authorities responsible for financial services**

The authority of each Party responsible for financial services is:

(a) for Bahrain, the Bahrain Monetary Agency; and

(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance services.

# **Chapter Twelve. Telecommunications**

## **Article 12.1. Scope and Coverage**

1. This Chapter applies to measures affecting trade in the telecommunications sector.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

## **Article 12.2. Access to and Use of Public Telecommunications Services**

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 4.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with, a public telecommunications network;

(b) provide services to individual or multiple end-users over leased circuits; (1)

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another service supplier;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

(1) For greater certainty, this subparagraph does not prohibit either Party from requiring a service supplier to obtain a license to supply telecommunications services to third parties.

## **Article 12.3. Obligations Relating to Suppliers of Public Telecommunications Services (2)**

(2) This Article is subject to Annex 12-A.

### *Interconnection*

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purpose of providing these services. Number Portability

2. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions. (3)

(3) This paragraph applies to Bahrain upon a determination by its telecommunications regulatory body that sufficient consumer demand exists for number portability.

### *Dialing Parity*

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of the other Party. (4)

(4) Bahrain may exempt commercial mobile services from its obligations under this paragraph.

## **Article 12.4. Additional Obligations Relating to Major Suppliers of Public Telecommunications Services (5)**

(5) This Article is subject to Annex 12-B.

### *Treatment by Major Suppliers*

1. Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party, licensed within its territory, no less favorable treatment than such major supplier accords to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and (b) the availability of technical interfaces necessary for interconnection.

### *Competitive Safeguards*

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anticompetitive results; and (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

#### *Resale*

3. Each Party shall ensure that a major supplier in its territory:

(a) offers for resale, at reasonable rates, (6) to suppliers of public telecommunications services of the other Party, public telecommunications services that the major supplier provides at retail to end-users that are not suppliers of public telecommunications services; and

(b) does not impose unreasonable or discriminatory conditions or limitations on the resale of such services. (7)

(6) For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations shall be considered reasonable.

(7) Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

#### *Unbundling of Network Elements*

4. Each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services. Interconnection

5. (a) General Terms and Conditions Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(i) at any technically feasible point in the major supplier's network;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(iv) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of a major supplier in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an interconnection agreement in effect or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers Each Party shall require a major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of Procedures for Interconnection Negotiations Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body or other relevant body.

(ii) Each Party shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in its territory. Provisioning and Pricing of Leased Circuits Services

6. (a) Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based, cost-oriented prices.

*Co-Location*

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory:

(i) provides an alternative solution; or

(ii) facilitates virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(c) Each Party may determine through its law or regulations which premises are subject to subparagraphs (a) and (b).

*Poles, Ducts, and Conduits*

8. Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, and conduits to suppliers of public telecommunications services of the other Party on terms and conditions, and at rates, that are reasonable, nondiscriminatory, and transparent.

## **Article 12.5. Submarine Cable Systems**

Each Party shall ensure that any supplier that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services.

## **Article 12.6. Conditions for the Supply of Value-added Services**

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services to facilities that it does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) interconnect its networks with any particular customer for the supply of those services; or (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

## **Article 12.7. Independent Regulatory Bodies and Government Ownership**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.
2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.
3. Neither Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of value-added services in its territory than that accorded to a like supplier of the other Party on the basis that the supplier receiving more favorable treatment is owned by the national government of the Party.
4. Each Party shall maintain the absence of or eliminate as soon as feasible national government ownership in any supplier of public telecommunications services. Where a Party has an ownership interest in a supplier of public telecommunications services and intends to reduce or eliminate its interest, it shall notify the other Party of its intention as soon as possible.

## **Article 12.8. Universal Service**

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

## **Article 12.9. Licensing Process**

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:
  - (a) all the licensing criteria and procedures it applies;
  - (b) the period it normally requires to reach a decision concerning an application for a license; and
  - (c) the terms and conditions of all licenses it has issued.
2. Each Party shall ensure that, on request, an applicant receives the reasons for its denial of a license.

## **Article 12.10. Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights of way, (8) in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.
3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 10.4 (Market Access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

(8) With respect to Bahrain's obligations under paragraph 1, "rights of way" means right of use as provided under Chapter 13 of the Telecommunications Law of Bahrain.

## **Article 12.11. Enforcement**

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Articles 12.2 through 12.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

## **Article 12.12. Resolution of Telecommunications Disputes**

Further to Articles 17.3 (Administrative Proceedings) and 17.4 (Review and Appeal), each Party shall ensure the following:

*Recourse to Telecommunications Regulatory Bodies*

(a) enterprises may seek review by a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 12.2 through 12.5; and

(b) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by its telecommunications regulatory body (9) to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

*Review and Appeal*

(c) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of its telecommunications regulatory body may obtain review of the determination or decision by an independent judicial authority or other independent tribunal.

(9) The United States may comply with this obligation by providing for review by a state regulatory authority.

## **Article 12.13. Transparency of Measures Relating to Telecommunications**

Further to Article 17.1 (Publication), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

(c) its measures relating to public telecommunications services are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service;

(ii) procedures relating to judicial and other adjudicatory proceedings;

(iii) specifications of technical interfaces;

(iv) conditions for attaching terminal or other equipment to the public telecommunications network; and

(v) notification, permit, registration, or licensing requirements, if any.

## **Article 12.14. Flexibility In the Choice of Technologies**

Neither Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

## **Article 12.15. Forbearance**

1. The Parties recognize the importance of relying on competitive market forces to provide wide choice in the supply of telecommunications services. To this end, each Party may forbear, to the extent provided for in its law, from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of the regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

2. For greater certainty, each Party shall subject its regulatory body's decision to forebear to judicial review in accordance with subparagraph (c) of Article 12.12.

## Article 12.16. Relationship to other Chapters

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

## Article 12.17. Definitions

For purposes of this Chapter:

**co-location (physical)** means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to supply public telecommunications services;

**co-location (virtual)** means the ability to lease and control equipment of a supplier of public telecommunications services for the purpose of interconnecting with that supplier or accessing its unbundled network elements;

**commercial mobile services** means public telecommunications services supplied through mobile wireless means;

**cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

**dialing parity** means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

**end-user** means a final consumer of or final subscriber to a public telecommunications service;

**enterprise** means an "enterprise" as defined in Article 1.3 (Definitions) and includes a branch of an enterprise;

**essential facilities** means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers, and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

**interconnection** means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular customer or other user;

**major supplier** means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of

(a) control over essential facilities, or

(b) use of its position in the market; network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

**non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

**number portability** means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;

**public telecommunications service** (10) means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

**reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body (11) that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in

negotiations with the major supplier;

**service supplier of the other Party** means, with respect to a Party, a person that is either a BIT investment in the territory of the Party or a person of the other Party and that seeks to supply or supplies services in or into the territory of the Party, and includes a supplier of public telecommunications services;

**telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means;

**telecommunications regulatory body** means a national body responsible for the regulation of telecommunications;

**user** means a service consumer or a service supplier; and

**value-added services** means services that add value to telecommunications services through enhanced functionality. In the United States, these are services as defined in 47 U.S.C. § 153(20).

(10) In Bahrain, public telecommunications services do not include services provided pursuant to a VSAT license, a paging license, a public access mobile radio services license, a value-added services license, an internet exchange license, or an internet service provider license.

(11) In the United States, this body may be a state regulatory authority.

## **ANNEX 12-A.**

Paragraphs 2 and 3 of Article 12.3 do not apply to the United States with respect to suppliers of commercial mobile services. In addition, a state regulatory authority of the United States may exempt a rural local exchange carrier, as defined in Section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in paragraphs 2 and 3 of Article 12.3.

## **ANNEX 12-B.**

1. Article 12.4 does not apply to the United States with respect to a rural telephone company, as defined in section 3(37) of the Communications Act of 1934, as amended, unless a state regulatory authority orders that the requirements described in that Article be applied to the company. In addition, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in Article 12.4.

2. Paragraphs 3 through 8 of Article 12.4 do not apply to the United States with respect to suppliers of commercial mobile services

# **Chapter Thirteen. Electronic Commerce**

## **Article 13.1. General**

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

## **Article 13.2. Electronic Supply of Services**

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means are subject to the obligations contained in the relevant provisions of Chapters Ten (Cross-Border Trade in Services) and Eleven (Financial Services), subject to any exceptions or non-conforming measures set out in the Agreement that are applicable to such obligations.

## **Article 13.3. Customs Duties**

1. Neither Party may impose customs duties, fees, or other charges (1) on or in connection with the importation or exportation of digital products by electronic transmission.

2. Each Party shall determine the customs value of an imported carrier medium bearing a digital product of the other Party based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

(1) For greater certainty, Article 13.3 does not preclude a Party from imposing internal taxes or other internal charges on digital products, provided that these are imposed in a manner consistent with this Agreement.

## Article 13.4. Non-discriminatory Treatment of Digital Products

1. Neither Party may accord less favorable treatment to some digital products than it accords to other like digital products:

(a) on the basis that

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory, or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or non-Party; or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

2. Neither Party may accord less favorable treatment to digital products:

(a) created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

3. Paragraphs 1 and 2 do not apply to any non-conforming measure described in Articles 10.6 (Non-Conforming Measures) and 11.9 (Non-Conforming Measures).

## Article 13.5. Definitions

For the purposes of this Chapter:

**carrier medium** means any physical object capable of storing a digital product, by any existing method or method later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, and a magnetic tape;

**digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, (2) regardless of whether they are fixed on a carrier medium or transmitted electronically;

**electronic transmission** or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means; and

**using electronic means** means employing computer processing.

(2) For greater certainty, digital products do not include digitized representations of financial instruments.

# Chapter Fourteen. Intellectual Property Rights

## Article 14.1. General Provisions

1. Each Party shall, at a minimum, give effect to this Chapter.

*International Agreements and Recommendations*

2. Each Party shall ratify or accede to the following agreements:

- (a) the Patent Cooperation Treaty (1970), as amended in 1979;
  - (b) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
  - (c) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);
  - (d) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980;
  - (e) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention);
  - (f) the Trademark Law Treaty (1994);
  - (g) the WIPO Copyright Treaty (1996); and (h) the WIPO Performances and Phonograms Treaty (1996).
3. Each Party shall make best efforts to ratify or accede to the following agreements: (a) the Patent Law Treaty (2000); and (b) the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

#### *More Extensive Protection and Enforcement*

4. A Party may implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement does not contravene this Chapter. National Treatment
5. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (1) of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection (2) and enjoyment of such intellectual property rights and any benefits derived from such rights.
6. A Party may derogate from paragraph 5 in relation to its judicial and administrative procedures, including any procedure requiring a national of the other Party to designate for service of process an address in its territory or to appoint an agent in its territory, provided that such derogation: (a) is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and (b) is not applied in a manner that would constitute a disguised restriction on trade.
7. Paragraph 5 does not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization in relation to the acquisition or maintenance of intellectual property rights.

#### *Application of Agreement to Existing Subject Matter and Prior Acts*

8. Except as otherwise provided in this Chapter, including Article 14.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under the terms of this Chapter.
9. Except as otherwise provided in this Chapter, including Article 14.4.5, a Party shall not be required to restore protection to subject matter, that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.
10. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

#### *Transparency*

11. Further to Article 17.1 (Publication), each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published, (3) or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent.

(1) For purposes of Articles 14.1.5, 14.1.6, 14.2.12, and ,14.6.1 a national of a Party shall also mean, in respect of the relevant right, an entity located in such Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 14.1.2 and the TRIPS Agreement.

(2) For purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and

enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further for purposes of this paragraph, "protection" shall also include the prohibition on circumvention of effective technological measures pursuant to Article 14.4.7 and the provisions concerning rights management information pursuant to Article 14.4.8.

(3) For greater certainty, a Party may satisfy the requirement for publication by making it available to the public on the Internet.

## **Article 14.2. Trademarks, Including Geographical Indications**

1. Neither Party may require, as a condition of registration, that signs be visually perceptible and neither Party may deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or that the sign includes a scent.

2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that signs that may serve, in the course of trade, as geographical indications may constitute certification or collective marks. (4)

3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good ("common name") including, inter alia, requirements concerning the relative size, placement or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion.

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

6. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (5) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for a refusal to register a trademark;

(b) providing an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) providing an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

8. Each Party shall provide (a) a system for the electronic application, processing, registration, and maintenance of trademarks, and (b) a publicly available electronic database – including an on-line database – of trademark applications and registrations.

9. (a) Each Party shall provide that each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979) ("Nice Classification").

(b) Each Party shall provide that goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

10. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no

less than 10 years.

11. Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.

12. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall accept those applications and petitions without the requirement for intercession by a Party on behalf of its nationals and shall:

(a) process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

(b) make the regulations governing filing of such applications or petitions, as the case may be, readily available to the public.

(c) provide that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition.

(d) provide that measures governing the filing of applications or petitions for geographical indications set out clearly the procedures for these actions. Such procedures shall include contact information sufficient for applicants and/or petitioners to obtain specific procedural guidance regarding the processing.

13. Each Party shall provide that grounds for refusing protection or recognition of a geographical indication include the following:

(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a good-faith pending application or registration; and

(b) the geographical indication is likely to cause confusion with a preexisting trademark, the rights to which have been acquired through use in good faith in that Party.

(4) Geographical indications means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs (such as words - including geographical and personal names, as well as letters, numerals, figurative elements and colors, including single colors), in any form whatsoever, shall be eligible to be a geographical indication.

(5) In determining whether a trademark is well known, the reputation of the trademark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

## **Article 14.3. Domain Names on the Internet**

1. Each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), in order to address the problem of trademark cyberpiracy.

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants.

## **Article 14.4. Obligations Pertaining to Copyright and Related Rights**

1. Each Party shall provide that authors, performers, and producers of phonograms (6) have the right (7) to authorize or prohibit all reproductions of their works, performances, and phonograms (8), in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Each Party shall provide to authors, performers, and producers of phonograms the right of authorizing the making available to the public of the original and copies of their works, performances, and phonograms through sale or other transfer of ownership.

3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer

is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be (i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or

(ii) failing such authorized publication within 50 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply Article 18 of the Berne Convention (and Article 14.6 of the TRIPS Agreement), *mutatis mutandis*, to the subject matter, rights, and obligations in Articles 14.4 through 14.6.

6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer such right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise those rights in that person's own name and enjoy fully the benefits derived from those rights.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or

(ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, which:

(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure, or

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure;

shall be liable and subject to the remedies provided for in Article 14.10.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in the above activities.

(b) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other subject matter, or protects any copyright or any rights related to copyright.

(c) In implementing subparagraph (a), neither Party is obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such product does not otherwise violate any measures implementing subparagraph (a).

(d) Each Party shall provide that a violation of the measures implementing this Article is a separate civil or criminal offence and independent of any infringement that might occur under the Party's law on copyright and related rights.

(e) Each Party shall confine exceptions to measures implementing subparagraph (a) to the following activities, which shall be

applied to relevant measures in accordance with subparagraph (f):

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in such activity, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(v) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

(vi) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar government activities;

(vii) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and

(viii) non-infringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those non-infringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that any limitation or exception adopted in reliance upon this subparagraph shall have effect for a renewable period of not more than three years from the date of conclusion of such proceeding.

(f) The exceptions to measures implementing subparagraph (a) for the activities set forth in Article 14.4.7(e) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (e).

(ii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (e)(i), (ii), (iii), (iv), and (vi).

(iii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (e)(i) and (vi).

8. In order to provide adequate and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority; shall be liable and subject to the remedies provided for in Article 14.10.15. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or

public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in the above activities.

(b) Each Party shall confine exceptions to the obligations in subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar government activities.

(c) **Rights management information** means

(i) information which identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram; or

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information; when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or making available of a work, performance, or phonogram to the public. Nothing in this paragraph obligates a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. Each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees mandating that its agencies use computer software only as authorized by the right holder. Such measures shall actively regulate the acquisition and management of software for government use.

10. (a) With respect to this Article and Articles 14.5 and 14.6, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

(b) Notwithstanding subparagraph (a) and Article 6.3(b), neither Party shall permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

(6) References to "authors, performers, and producers of phonograms" refer also to any successors in interest.

(7) With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize shall be construed to mean an exclusive right.

(8) With respect to copyright and related rights in this Chapter, a "performance" refers to a performance fixed in a phonogram, unless otherwise specified.

## **Article 14.5. Obligations Pertaining Specifically to Copyright**

Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

## **Article 14.6. Obligations Pertaining Specifically to Related Rights**

1. Each Party shall accord the rights provided for in this Chapter to the performers and producers of phonograms who are nationals of the other Party and to performances or phonograms first published or first fixed in the territory of the other Party. A performance or phonogram shall be considered first published in the territory of the other Party if it is published in that territory within 30 days of its original publication. (9)

2. Each Party shall provide to performers the right to authorize or prohibit (a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance, and (b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 14.5.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of domestic law.

(c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 4.4.10, which shall not be prejudicial to the right of the performer or producer of phonograms to obtain equitable remuneration.

4. Neither Party shall subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

5. For purposes of Articles 14.4 and 14.6, the following definitions apply with respect to performers and producers of phonograms:

(a) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) **producer of a phonogram** means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(e) **publication of a performance or a phonogram** means the offering of copies of the performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;

(f) **broadcasting** means the transmission by wireless means or satellite to the public of sounds or sounds and images, or of the representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public; and

(g) **communication to the public of a performance or a phonogram** means the transmission to the public by any medium, otherwise than broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

(9) For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

## Article 14.7. Protection of Encrypted Program-carrying Satellite Signals

1. Each Party shall make it:

(a) a criminal offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) a criminal offense willfully to receive or further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or the content of such signal.

## Article 14.8. Patents

1. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by law. Each Party may also exclude from patentability animals and diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals.

2. Each Party shall make patents available for plant inventions. In addition, the Parties confirm that patents shall be available for any new uses or methods of using a known product, including products to be used for particular medical conditions, subject to the exclusions provided in Article 14.8.1 and the conditions of patentability.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Each Party shall provide that a patent may be revoked only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking or holding a patent unenforceable. Where a Party provides proceedings that permit a third party to oppose the grant of a patent, a Party shall not make such proceedings available prior to the grant of the patent.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent solely to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the Party, or two years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(b) With respect to any pharmaceutical product that is covered by a patent:

(i) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of the product in that Party; and

(ii) where a Party approves the marketing of a new pharmaceutical product on the basis of information concerning the safety or efficacy of a same or a similar product in another territory, such as evidence of prior marketing approval, the Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term in the Party as a result of the marketing approval process in the other territory and in the Party.

For purposes of this paragraph, **effective patent term** means the period from the date of approval of the product until the original expiration date of the patent.

7. When a Party provides for the grant of a patent on the basis of a patent granted in another territory, that Party, at the request of the patent owner, shall extend the term of a patent granted under such procedure by a period equal to the period of the extension, if any, provided in respect of the patent granted by such other territory.

8. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step (10) if the public disclosure was (a) made or authorized by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the Party.

9. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations.

10. Each Party shall provide that a disclosure of a claimed invention is sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

11. Each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably

conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

(10) For purposes of this Article, the term "inventive step" will be treated as synonymous with the term "non-obvious."

## **Article 14.9. Measures Related to Certain Regulated Products**

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval; for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval in the other territory; for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the Party.

(c) For purposes of this Article, a new pharmaceutical product is one that does not contain a chemical entity that has been previously approved in the Party for use in a pharmaceutical product and a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the Party for use in an agricultural chemical product.

2. (a) If a Party requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information, other than information related to bioequivalency, the Party shall not, without the consent of a person that previously submitted such new clinical information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval based on the new clinical information;

for at least three years from the date of marketing approval in the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a pharmaceutical product of the type specified in subparagraph (a), the submission of evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory, other than evidence of information related to bioequivalency, such as evidence of prior marketing approval based on the new clinical information, the Party shall not, without the consent of the person that previously submitted such new clinical information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval based on the new clinical information in the other territory;

for at least three years from the date of marketing approval based on the new clinical information in the Party.

(c) If a Party requires or permits, as a condition of granting marketing approval, for a new use, for an agricultural chemical product that has been previously approved in the Party, the submission of safety or efficacy information, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product for that use based on:

(i) the submitted safety or efficacy information; or

(ii) evidence of the marketing approval for that use;

for at least ten years from the date of the original marketing approval of the agricultural chemical product in the Party.

(d) If a Party requires or permits, in connection with granting marketing approval, for a new use, for an agricultural chemical product that has been previously approved in the Party, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory for that new use, such as evidence of prior marketing approval for that new use, the Party shall not, without the consent of the person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval for that use in the other territory; or

(ii) evidence of prior marketing approval in another territory for that new use

for at least ten years from the date of the original marketing approval granted in the Party.

3. When a product is subject to a system of marketing approval pursuant to paragraph 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraphs 1 and 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraphs 1 and 2.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the Party or in another territory, that Party:

(a) shall implement measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the product or its approved method of use during the term of that patent, unless by consent or acquiescence of the patent owner; and

(b) shall provide that the patent owner shall be notified of the identity of any such other person who requests marketing approval to enter the market during the term of a patent notified to the approving authority as covering that product.

## **Article 14.10. Enforcement of Intellectual Property Rights**

### *General Obligations*

1. Each Party shall provide that final judicial decisions or administrative rulings of general applicability pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis upon which the decisions are based. Each Party shall also provide that such decisions or rulings shall be published, (11) or where such publication is not practicable, otherwise made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

2. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal system, including any statistical information that the Party may collect for such purposes. Nothing in this paragraph shall require a Party to disclose confidential information that would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

3. The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with the provisions of this Chapter.

4. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

(11) The requirement for publication may be satisfied by making it available to the public on the Internet.

### *Civil and Administrative Procedures and Remedies*

5. Each Party shall make available to right holders (12) civil judicial procedures concerning the enforcement of any intellectual property right.

6. Each Party shall provide that:

(a) in civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement, and

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and are not taken into account in computing the amount of the damages referred to in clause (i).

(b) in determining damages, the judicial authorities shall, inter alia, consider the value of the infringed-upon good or service, according to the suggested retail price or other legitimate measure of value put forth by the right holder of the infringed-upon good or service.

7. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain a system of pre-established damages, which shall be available upon the election of the right holder and shall function so as to constitute a deterrent to infringements and to compensate fully the right holder for the harm caused by the infringement.

8. Each Party shall provide that its judicial authorities, except in exceptional circumstances, have the authority to order, at the conclusion of the civil judicial proceedings concerning copyright or related rights infringement and trademark infringement, that the prevailing party be awarded payment of court costs or fees and reasonable attorneys' fees by the losing party. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party be awarded payment of reasonable attorneys' fees by the losing party.

9. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

10. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;

(b) the authorities shall also have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

11. Each Party shall provide that in civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person(s) or entities involved in any aspect of the infringement and regarding the means of production or the distribution channel of such goods or services, including the identification of third parties that are involved in the production and distribution of the infringing goods or services and their channels of distribution, and to provide this information to the right holder.

12. Each Party shall provide that its judicial authorities have the authority to fine or imprison, in appropriate cases, a party to a litigation who fails to abide by valid orders issued by such authorities, and impose sanctions on parties to a litigation, their counsel, experts or other persons subject to the court's jurisdiction, for violation of its orders regarding the protection of confidential information produced or exchanged in a proceeding.

13. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set forth in this Chapter.

14. Each Party shall provide for civil remedies against the acts described in Article 14.4.7 and Article 14.4.8. Available civil remedies shall include at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) the opportunity for the right holder to elect between actual damages it suffered (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or preestablished damages;

(c) payment to the prevailing right holder of court costs and fees and reasonable attorney's fees by the party engaged in the prohibited conduct at the conclusion of the civil judicial proceedings; and

(d) destruction of devices and products found to be involved in the prohibited activity. No Party shall make damages available against a nonprofit library, archives, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that such entity was not aware and had no reason to believe that its acts constituted a prohibited activity.

15. In civil judicial proceedings, each Party shall provide that the judicial authorities have the authority to order a party to desist from an infringement, in order, inter alia, to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right immediately after customs clearance of such goods, or to prevent their exportation.

16. In the event that judicial or other authorities appoint experts, technical or otherwise, that must be paid by a party to a litigation, such costs should be closely related, inter alia, to the quantity and nature of work to be performed and should not unreasonably deter recourse to such proceedings.

(12) For the purpose of this Article, the term "right holder" shall include exclusive licensees as well as federations and associations having the legal standing and authority to assert such rights; the term "exclusive licensee" shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

#### *Provisional Measures*

17. Parties shall act upon requests for relief *inaudita altera parte* expeditiously and generally execute such requests within 10 days, except in exceptional cases.

18. Each Party shall provide that its judicial authorities have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

19. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

#### *Special Requirements Related to Border Measures*

20. Each Party shall provide that any right holder initiating procedures for suspension by its competent authorities of the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods (13) into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyright or the relevant trademark registration is valid, whichever is shorter.

21. Each Party shall provide that its competent authorities have the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing copy.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, each Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

23. Each Party shall provide that its competent authorities may initiate border measures *ex officio*, with respect to imported,

exported, or in transit merchandise, without the need for a formal complaint from a private party or right holder.

24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods, nor shall they be authorized to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

25. Where an application fee or merchandise storage fee is assessed, each Party shall provide that such fee shall not be set at an amount that unreasonably deters recourse to these procedures.

(13) For the purposes of this paragraphs 20-25: (a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; (b) **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

#### *Criminal Procedures and Remedies*

26. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes (i) significant willful infringements of copyright or related rights that have no direct or indirect motivation of financial gain, as well as (ii) willful infringement for purposes of commercial advantage or private financial gain. Willful importation or exportation of counterfeit or pirated goods shall be treated as unlawful activities subject to criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce.

27. Specifically, each Party shall provide:

(a) remedies that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future acts of infringement consistent with a policy of removing the monetary incentive of the infringer. Each Party shall further establish policies or guidelines that encourage such fines to be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order;

(c) that its judicial authorities have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity and shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to willful copyright or related rights piracy, materials and implements that have been used in the creation of the infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation of any kind to the defendant; and

(d) That its authorities may initiate legal action ex officio, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied in the following cases, even absent willful trademark counterfeiting or copyright piracy: (a) the knowing trafficking in counterfeit labels affixed or designed to be affixed to a phonogram, to a copy of a computer program or to documentation or packaging for a computer program, or to a copy of a motion picture or other audiovisual work; and (b) the knowing trafficking in counterfeit documentation or packaging for a computer program.

#### *Limitations on Liability for Service Providers*

29. For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set forth in this Article:

(a) legal incentives for service providers to cooperate with copyright (14) owners in deterring the unauthorized storage and

transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b). (15)

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions: (16)

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (i)(D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) – (vii).

(iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the territory of each Party used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (i)(D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix) and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the territory of each Party that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service,

or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) For purposes of the function referred to in clause (i)(A), service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for purposes of the functions referred to in clauses (i)(B) through (i)(D) service provider means a provider or operator of facilities for online services or network access.

(14) For purposes of this article, "copyright" shall also include related rights.

(15) It is understood that this subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

(16) Either Party may request consultations with the other Party to consider how to address future functions of a similar nature under this paragraph.

## **Article 14.11. Transitional Provisions**

1. Except as provided in paragraph 2, each Party shall implement the obligations of this Chapter as of the date of entry into force of this Agreement.

2. Each Party shall ratify or accede to the agreements listed in paragraph 2(b) and (d) of Article 1 within one year of the date of entry into force of this Agreement.

## **Chapter Fifteen. Labor**

### **Article 15.1. Statement of Shared Commitment**

1. The Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments

under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) ("ILO Declaration"). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 15.7 are recognized and protected by its law.

2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 15.7 and shall strive to improve those standards in that light.

## **Article 15.2. Application and Enforcement of Labor Laws**

1. (a) Neither Party shall fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. Each Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 15.7 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

## **Article 15.3. Procedural Guarantees and Public Awareness**

1. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall provide that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(d) such proceedings do not entail unreasonable charges or time limits or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions, or emergency workplace closures.

7. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available; and

(b) encouraging education of the public regarding its labor laws.

## **Article 15.4. Institutional Arrangements**

1. The Joint Committee established under Chapter Eighteen (Administration of the Agreement) shall consider issues and review activities related to the operation of this Chapter, including the Labor Cooperation Mechanism established under Article 15.5, and the pursuit of the labor objectives of this Agreement. The Joint Committee may establish a Subcommittee on Labor Affairs comprising officials of the labor ministry and other appropriate agencies or ministries of each Party. The Subcommittee shall meet at such times as it deems appropriate to discuss matters related to the operation of this Chapter, and each meeting shall include a public session, unless the Parties agree otherwise.
2. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Party and with the public for purposes of implementing this Chapter. Each Party's contact point shall provide for the submission, receipt, and consideration of public communications on matters related to this Chapter and shall make such communications available to the other Party and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures.
3. Each Party may convene a national labor advisory committee comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation of this Chapter.
4. Each formal decision of the Parties concerning the implementation of this Chapter shall be made public, unless the Parties agree otherwise. 5. The Parties, when they consider it appropriate, shall jointly prepare reports on matters related to the implementation of this Chapter and shall make such reports public.

## **Article 15.5. Labor Cooperation**

Recognizing that cooperation provides enhanced opportunities to promote respect for core labor standards embodied in the ILO Declaration and compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) ("ILO Convention 182"), and to further advance other common commitments regarding labor matters, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 15-A.

## **Article 15.6. Labor Consultations**

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the other Party's contact point. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request for consultations to the other Party's contact point designated pursuant to paragraph 2 of Article 15.4.
2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.
3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Labor Affairs be convened. The Subcommittee shall convene within 30 days after a Party delivers a request to convene the Subcommittee to the other Party's contact point designated pursuant to paragraph 2 of Article 15.4, unless the Parties agree otherwise. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, it shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or non-governmental experts and having recourse to such procedures as good offices, conciliation, or mediation.
4. If a Party considers that the other Party has failed to carry out its obligations under paragraph 1(a) of Article 15.2, the Party may request consultations under paragraph 1 or pursuant to Article 19.5 (Consultations).
  - (a) If a Party requests consultations pursuant to Article 19.5 (Consultations) at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the Subcommittee is endeavoring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under Article 19.5 (Consultations), no consultations on the same matter may be entered into under this Article.
  - (b) If a Party requests consultations pursuant to Article 19.5 (Consultations) more than 60 days after the delivery of a request for consultations under paragraph 1, the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 19.6 (Referral to the Joint Committee).

5. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than paragraph 1(a) of Article 15.2.

## **Article 15.7. Definitions**

For purposes of this Chapter:

**labor laws** means a Party's statutes or regulations, (1) or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(1) For the United States, statutes or regulations means acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government.

## **Chapter Sixteen. Environment**

### **Article 16.1. Levels of Protection**

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies.

### **Article 16.2. Application and Enforcement of Environmental Laws**

1. (a) Neither Party shall fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. Each Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

### **Article 16.3. Procedural Matters**

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent, and, to this end, shall comply with due process of law and be open to the public (except where the administration of justice otherwise requires).

(b) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

(i) take into consideration the nature and gravity of the violation, any economic benefit the violator has derived from the

violation, the economic condition of the violator, and other relevant factors; and

(ii) may include compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that the competent authorities give such requests due consideration in accordance with its law.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to the proceedings referred to in paragraph 1.

4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights such as:

(a) the right to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;

(b) the right to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws;

(c) the right to request the competent authorities to take appropriate action to enforce the Party's environmental laws in order to protect the environment or to avoid environmental harm; or

(d) the right to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws or from tortious conduct that harms human health or the environment.

## **Article 16.4. Voluntary Mechanisms to Enhance Environmental Performance**

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set forth in Article 16.3. As appropriate and in accordance with its law, each Party shall encourage the development of such incentives and voluntary mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, nongovernmental organizations, government agencies, or scientific organizations;

(ii) voluntary guidelines for environmental performance; or

(iii) sharing of information and expertise among government agencies, interested parties, and the public, concerning: methods for achieving high levels of environmental protection; voluntary environmental auditing and reporting; or ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based mechanisms where appropriate, to encourage conservation, restoration, enhancement, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging or trading permits, credits, or other instruments to help achieve environmental goals efficiently.

2. As appropriate, and in accordance with its law, each Party shall encourage:

(a) the development and improvement of performance goals and standards used in measuring environmental performance; and

(b) flexible means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

## **Article 16.5. Institutional Arrangements**

1. In addition to discussions of matters related to the operation of this Chapter that may take place in the Joint Committee established under Chapter Eighteen (Administration of the Agreement), the Joint Committee shall, at the request of either Party, establish a Subcommittee on Environmental Affairs comprising government officials to discuss matters related to the operation of this Chapter. Meetings of the Subcommittee shall include, unless the Parties agree otherwise, a session where

members of the Subcommittee have an opportunity to meet with the public to discuss matters related to the operation of this Chapter.

2. The Parties, when they consider appropriate, shall jointly prepare reports on matters related to the implementation of this Chapter, and shall make such reports public, except as otherwise provided in this Agreement.

3. Any formal decision of the Parties concerning the implementation of this Chapter shall be made public, unless the Parties agree otherwise.

## **Article 16.6. Opportunities for Public Participation**

1. Recognizing that opportunities for public participation can facilitate the sharing of best practices and the development of innovative approaches to issues of interest to the public, each Party shall develop or maintain procedures for dialogue with its public concerning the implementation of this Chapter, including opportunities for its public to: (a) suggest matters to be discussed at the meetings of the Joint Committee or, if a Subcommittee on Environmental Affairs has been established pursuant to Article 16.5, meetings of the Subcommittee; and (b) provide, on an ongoing basis, views, recommendations, or advice on matters related to the implementation of this Chapter. Each Party shall make these views, recommendations, or advice available to the other Party and the public.

2. Each Party may convene, or consult with an existing, national advisory committee comprising representatives of both its environmental and business organizations and other members of its public, to advise it on the implementation of this Chapter, as appropriate.

3. Each Party shall make best efforts to respond favorably to requests for discussions by persons in its territory regarding its implementation of this Chapter.

4. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding cooperative environmental activities the 16-3 Parties undertake pursuant to the Memorandum of Understanding on Environmental Cooperation between The Government of the United States of America and the Government of the Kingdom of Bahrain described in Article 16.7.

## **Article 16.7. Environmental Cooperation**

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations. The Parties are committed to undertaking cooperative environmental activities pursuant to a United States–Bahrain Memorandum of Understanding on Environmental Cooperation developed by the Parties, and in other fora.

2. Each Party shall also seek opportunities for its citizens to participate in the development and implementation of cooperative environmental activities, such as through the use of public-private partnerships.

3. The Parties also recognize the ongoing importance of current and future environmental cooperation that may be undertaken outside this Agreement. 4. Each Party shall, as it deems appropriate, share information with the other Party and the public regarding its experience in assessing and taking into account the positive and negative environmental effects of trade agreements and policies.

## **Article 16.8. Environmental Consultations**

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point designated by the other Party for this purpose. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.

3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Environmental Affairs be convened to consider the matter. The Subcommittee shall convene within 30 days after a Party delivers a written request to the other Party's contact point designated pursuant to paragraph 1, unless the Parties agree otherwise. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, it shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or nongovernmental experts and having recourse to such procedures as good offices, conciliation, or mediation.

4. If a Party considers that the other Party has failed to carry out its obligations under paragraph 1(a) of Article 16.2, the Party may request consultations under paragraph 1 or pursuant to Article 19.5 (Consultations).

(a) If a Party requests consultations pursuant to 19.5 (Consultations) at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the Subcommittee is endeavoring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under 19.5 (Consultations), no consultations on the same matter may be entered into under this Article.

(b) If a Party requests consultations pursuant to 19.5 (Consultations) more than 60 days after delivery of a request for consultations under paragraph 1, the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 19.6 (Referral to the Joint Committee).

5. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than paragraph 1(a) of Article 16.2. 16-4

## **Article 16.9. Relationship to Environmental Agreements**

1. The Parties recognize that the multilateral environmental agreements to which they are both party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements.

2. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of the multilateral environmental agreements to which they are both party and the international trade agreements to which they are both party. The Parties shall consult regularly with respect to negotiations in the WTO regarding multilateral environmental agreements.

## **Article 16.10. Definitions**

For purposes of this Chapter,

**environmental law** means any statute or regulation of a Party, (1) or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(1) For the United States, a statute or regulation means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

# **Chapter Seventeen. Transparency**

## **Article 17.1. Publication**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measures that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

## **Article 17.2. Notification and Provision of Information**

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure, regardless of whether the other Party has been previously notified of that measure.

### **Article 17.3. Administrative Proceedings**

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 17.1 to particular persons, goods, or services of the other Party in specific cases, that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its law.

### **Article 17.4. Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

### **Article 17.5. Anti-corruption**

1. The Parties reaffirm their resolve to eliminate bribery and corruption in international trade and investment.

2. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of the Party or a person who performs public functions for the Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of the Party intentionally to offer or grant, directly or indirectly, to a public official of the Party or a person who performs public functions for the Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of the Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of the Party to aid or abet, or to conspire in, the commission of any of the offenses

described in subparagraphs (a) through (c).

3. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 2.

4. Each Party shall adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery described in paragraph 2.

5. The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

## Article 17.6. Definitions

For purposes of this Chapter:

**act or refrain from acting in relation to the performance of official duties** includes any use of the official's position, whether or not within the official's authorized competence;

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

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice;

**foreign official** means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

**public function** means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

**public official** means any official or employee of a Party at the central level of government, whether appointed or elected.

## Chapter Eighteen. Administration of the Agreement

### Article 18.1. Contact Points

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement.

2. On request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

### Article 18.2. Joint Committee

1. The Parties hereby establish a Joint Committee to supervise the implementation of this Agreement and to review the trade relationship between the Parties.

(a) The Joint Committee shall comprise government officials of each Party and shall be chaired by

(i) the United States Trade Representative and

(ii) Bahrain's Minister of Finance and National Economy, or their designees.

(b) The Joint Committee may establish and delegate responsibilities to ad hoc and standing subcommittees or working groups and seek the advice of non-governmental persons.

2. The Joint Committee shall:

(a) review the general functioning of this Agreement;

- (b) review and consider specific matters related to the operation and implementation of this Agreement in the light of its objectives;
- (c) facilitate the avoidance and settlement of disputes arising under this Agreement, including through consultations pursuant to Chapter Nineteen (Dispute Settlement);
- (d) consider and adopt any amendment or other modification to this Agreement, subject to completion of necessary approval procedures by each Party;
- (e) consider ways to further enhance trade relations between the Parties and to promote the objectives of this Agreement, including through cooperation and assistance; and
- (f) take such other action as the Parties may agree.

3. The Joint Committee may establish its own rules of procedure.

4. Unless the Parties agree otherwise, the Joint Committee shall convene (a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and (b) in special session within 30 days of the request of a Party, with such special sessions to be held in the territory of the other Party or at such location as the Parties may agree.

5. The Parties recognize the importance of transparency and openness in implementing this Agreement, including considering the views of interested parties and other members of the public.

6. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee on the same basis as the Party providing the information.

## **Chapter Nineteen. Dispute Settlement**

### **Article 19.1. Cooperation**

The Parties shall endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

### **Article 19.2. Scope of Application**

Except as otherwise provided in this Agreement or as the Parties agree otherwise, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (National Treatment and Market Access for Goods), Chapter Four (Rules of Origin), Chapter Nine (Government Procurement), Chapter Ten (Cross-Border Trade in Services), or Chapter Fourteen (Intellectual Property Rights) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that neither Party may invoke this sub-paragraph with respect to a benefit under Chapter Ten (Cross-Border Trade in Services) or Chapter Fourteen (Intellectual Property Rights) if the measure is subject to an exception under Article 20.1 (General Exceptions).

### **Article 19.3. Administration of Dispute Settlement Proceedings**

Each Party shall designate an office that shall be responsible for providing administrative assistance to panels established under Article 19.7. Each Party shall be responsible for the operation and costs of its designated office and shall notify the other Party of its location.

### **Article 19.4. Choice of Forum**

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement, or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
3. Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible fora.
4. For the purposes of this paragraph, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.

## **Article 19.5. Consultations**

1. Either Party may request consultations with the other Party with respect to any matter described in Article 19.2 by delivering written notification to the other Party. If a Party requests consultations, the other Party shall reply promptly to the request for consultations and enter into consultations in good faith.
2. Each Party shall:
  - (a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and
  - (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.
3. Promptly after requesting or receiving a request for consultations pursuant to this Article, each Party shall seek the views of interested parties and other members of the public on the matter in order to draw on a broad range of perspectives.

## **Article 19.6. Referral to the Joint Committee**

If the consultations fail to resolve a matter within 60 days of the delivery of a Party's request for consultations under Article 19.5, 20 days where the matter concerns perishable goods, or such other period as the Parties may agree, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party. The Joint Committee shall endeavor to resolve the matter.

## **Article 19.7. Establishment of Panel**

1. If the Joint Committee has not resolved a matter within 60 days after delivery of the notification described in Article 19.6, 30 days where the matter concerns perishable goods, or such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party.
2. Neither Party may refer a matter concerning a proposed measure to a dispute settlement panel.
3. Unless the Parties agree otherwise:
  - (a) The panel shall have three members.
  - (b) Each Party shall appoint one panelist, in consultation with the other Party, within 30 days after the matter has been referred to a panel.
  - (c) The Parties shall endeavor to agree on a third panelist as chair within 30 days after the second panelist has been appointed. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days as chair an individual who is not a national of that Party.
  - (d) The date of establishment of the panel shall be the date on which the chair is appointed.
4. The panelists chosen pursuant to paragraph 3 shall:
  - (a) be chosen strictly on the basis of objectivity, reliability, and sound judgment and have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements;
  - (b) be independent of, and not be affiliated with or take instructions from, either Party; and
  - (c) comply with a code of conduct to be established by the Joint Committee. In addition, in disputes related to a Party's implementation of Chapter Fifteen (Labor), Chapter Sixteen (Environment), and such other chapters as the Parties may agree, panelists shall have expertise or experience relevant to the subject matter that is under dispute.

5. Panel hearings shall be held at a location determined in accordance with the model rules of procedure.

## **Article 19.8. Rules of Procedure**

1. The Parties shall establish by the date of entry into force of this Agreement model rules of procedure, which shall ensure:

- (a) a right to at least one hearing before the panel and that, subject to subparagraph (f), such hearings shall be open to the public;
- (b) an opportunity for each Party to provide initial and rebuttal submissions;
- (c) that each Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (f);
- (d) that the panel shall consider requests from nongovernmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;
- (e) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to Article 19.9.1; and
- (f) the protection of confidential information.

2. Unless the Parties agree otherwise, the panel shall follow the model rules of procedure and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

## **Article 19.9. Panel Report**

1. Unless the Parties agree otherwise, the panel shall, within 180 days after the chair is appointed, present to the Parties an initial report containing findings of fact, and its determination as to whether:

- (a) the measure at issue is inconsistent with the obligations of this Agreement;
- (b) a Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) the measure at issue is causing a nullification or impairment in the sense of Article 19.2(c); as well as any other determination requested by the Parties with regard to the dispute.

2. The panel shall base its report on the relevant provisions of the Agreement and the submissions and arguments of the Parties. The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.

3. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

4. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

## **Article 19.10. Implementation of the Final Report**

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 19.2(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

## **Article 19.11. Non-implementation**

1. If a panel has made a determination of the type described in Article 19.10.2, and the Parties are unable to reach

agreement on a resolution pursuant to Article 19.10.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

2. If the Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun, or

(b) have agreed on compensation or on a resolution pursuant to Article 19.10.1 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the other Party that it intends to suspend the application to the other Party of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

(a) the level of benefits that the other Party has proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee decides otherwise, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Bahraini currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under the Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4. 8. This Article shall not apply with respect to a matter described in Article 19.12.1.

## **Article 19.12. Non-implementation In Certain Disputes**

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 15.2.1(a) (Application and Enforcement of Labor Laws) or Article 16.2.1(a) (Application and Enforcement of Environmental Laws), and the Parties:

(a) are unable to reach agreement on a resolution pursuant to Article 19.10.1 within 45 days of receiving the final report; or

(b) have agreed on a resolution pursuant to Article 19.10.1 and the complaining Party considers that the other Party has

failed to observe the terms of the agreement, the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The complaining Party shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

- (a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
- (b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;
- (c) the reasons for the Party's failure to effectively enforce the relevant law;
- (d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;
- (e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel; and
- (f) any other relevant factors. The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex19-A.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any other time thereafter, the complaining Party may provide notice in writing to the Party complained against demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of Bahraini currency, in equal, quarterly installments beginning 60 days after the complaining Party provides such notice.

4. Assessments shall be paid into a fund established by the Joint Committee and shall be expended at the direction of the Joint Committee for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Joint Committee shall consider the views of interested persons in each Party's territory.

5. If the Party complained against fails to pay a monetary assessment, and if the Party has created and funded an escrow account to ensure payment of any assessments against it, the other Party shall, before having recourse to any other measure, seek to obtain the funds from the account.

6. If the complaining Party cannot obtain the funds from the other Party's escrow account within 30 days of the date on which payment is due, or if the other Party has not created an escrow account, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

### **Article 19.13. Compliance Review**

1. Without prejudice to the procedures set out in Article 19.11.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the other Party. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the nonconformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 19.11 or 19.12 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 19.11.5 or that has been imposed on it under Article 19.12.

### **Article 19.14. Five-year Review**

The Joint Committee shall review the operation and effectiveness of Articles 19.11 and 19.12 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

### **Article 19.15. Private Rights**

Neither Party may provide for a right of action under its law against the other Party on the ground that a measure of the

other Party is inconsistent with this Agreement.

## **Chapter Twenty. Exceptions**

### **Article 20.1. General Exceptions**

1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Ten, Twelve, and Thirteen (1) (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) This Article is without prejudice to whether digital products should be classified as goods or services.

### **Article 20.2. Essential Security**

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

### **Article 20.3. Taxation**

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

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 2.2 (National Treatment and Market Access for Goods – National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and

(b) Article 2.10 (National Treatment and Market Access for Goods – Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 10.2 (Cross-Border Trade in Services – National Treatment) and Article 11.2 (Financial Services – National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.2 (Cross-Border Trade in Services – National Treatment) and 10.3 (Cross-Border Trade in Services – Most-Favored-Nation Treatment) and Articles 11.2 (Financial Services – National Treatment) and 11.3 (Financial Services – Most-Favored-Nation Treatment) shall apply to all taxation measures other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in those Articles shall apply:

- (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS); or
- (h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

## **Article 20.4. Disclosure of Information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

# **Chapter Twenty One. Final Provisions**

## **Article 21.1. Annexes**

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

## **Article 21.2. Amendments**

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties complete any necessary approval procedures, on such date as the Parties may agree.

## **Article 21.3. Amendment of the Wto Agreement**

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult to consider amending the relevant provision of this Agreement, as appropriate, in accordance with Article 21.2.

## **Article 21.4. Expansion of the Free Trade Area**

1. Any country or group of countries may agree to become a Party to this Agreement, subject to such terms and conditions as may be agreed between such country or countries and the Parties and following approval in accordance with the applicable legal requirements and procedures of each country.
2. This Agreement shall not apply as between any Party and any country or group of countries if, at the time of the agreement described in paragraph 1, one of them does not consent to such application.

## **Article 21.5. Entry Into Force and Termination**

1. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or such other date as the Parties may agree.
2. Either Party may terminate this Agreement on 180-days written notice to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement in duplicate, in the English and Arabic languages, each text being equally authentic.

DONE at Washington, D.C., this fourteenth day of September, 2004

FOR THE GOVERNMENT THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE KINGDOM OF BAHRAIN