NORTH AMERICAN FREE TRADE AGREEMENT

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

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

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

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

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

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

Part One. GENERAL PART

Chapter One. OBJECTIVES

Article 101. Establishment of the Free Trade Area

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

Article 102. Objectives

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

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

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

c) increase substantially investment opportunities in the territories of the Parties;

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

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

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

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

Article 103. Relation to other Agreements

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

2. Tn the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 104. Relation to Environmental and Conservation Agreements

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

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

b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990,

c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, on its entry into force for Canada, Mexico and the United States, or

d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

2. The Parties may agree in writing to modify Annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

Article 105. Extent of Obligations

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

Annex 104.1. Bilateral and Other Environmental and Conservation Agreements

1. The Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, signed at Ottawa, October 28, 1986.

2. The Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, signed at La Paz, Baja California Sur, August 14, 1983.

Chapter Two. GENERAL DEFINITIONS

Article 201. Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

Commission means the Free Trade Commission established under Article 2001(1) (The Free Trade Commission);

Customs Valuation Code means the Agreement on Implementation of Article VH of the General Agreement on Tariffs and Trade, including its interpretative notes;

days means calendar days, including weekends and holidays;

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

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

existing means in effect on the date of entry into force of this Agreement;

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

goods of a Party means domestic products as these are understood in the General Agreement on Tariffs and Trade 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, and its legal notes, and rules as adopted and implemented by the Parties in their respective tariff laws;

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

national means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex 201.1;

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

person means a natural person or an enterprise; person of a Party means a national, or an enterprise of a Party; Secretariat means the Secretariat established under Article 2002(1) (The Secretariat);

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

territory means for a Party the territory of that Party as set out in Annex 201.1.

For purposes of this Agreement, unless otherwise specified, a reference to a state or province includes local governments of that state or province.

Annex 201.1. Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

national also includes:

a) with respect to Mexico, a national or a citizen according to Articles 30 and 34, respectively, of the Mexican Constitution; and

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

territory means:

a) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

b) with respect to Mexico,

(i) the states of the Federation and the Federal District,

(ii) the islands, including the reefs and keys, in adjacent seas,

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,

(vi) the space located above the national territory, in accordance with international law, and Annex 201.1

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources; and

c) 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.

Part Two. TRADE IN GOODS

Chapter Three. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 300. Scope and Coverage

This Chapter applies to trade in goods of a Party, including:

a) goods covered by Annex 300-A (Trade and Investment in the Automotive Sector),

b) goods covered by Annex 300-B (Textile and Apparel Goods), and

c) goods covered by another Chapter in this Part, except as provided in such Annex or Chapter.

Section A. National Treatment

Article 301. National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph | regarding national treatment shall mean, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded by such state or province 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 do not apply to the measures set out in Annex 301.3.

Section B. Tariffs

Article 302. Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any 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 302.2.

3. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall

supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.

4. Each Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 302.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

5. On written request of any Party, a Party applying or intending to apply measures pursuant to paragraph 4 shall consult to review the administration of those measures.

Article 303. Restriction on Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

a) subsequently exported to the territory of another Party,

b) used as a material in the production of another good that is subsequently exported to the territory of another Party, or

c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party may, on condition of export, refund, waive or reduce:

a) an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

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

c) a fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures); or

d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and

b) may waive or reduce such customs duties to the extent permitted under paragraph 1.

4. In determining the amount of customs duties that may be refunded, waived or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. Where satisfactory evidence of the customs duties paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

a) shall collect customs duties as if the exported good had been withdrawn for domestic consumption; and

b) may refund such customs duties to the extent permitted under paragraph 1 on the timely presentation of such evidence under its laws and regulations.

6. This Article does not apply to:

a) a good entered under bond for transportation and exportation to the territory of another Party;

b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported (processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's condition). Except as provided in Annex 703.2, Section A, paragraph 12, where such a good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph, may be determined on the basis of the inventory methods provided for in the Uniform Regulations established under Article 511 (Uniform Regulations);

(c) a good imported into the territory of a Party that is deemed to be exported from its territory, or used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of

(i) delivery to a duty-free shop,

(ii) delivery for ship's stores or supplies for ships or aircraft, or

(iii) delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be imported;

a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee;

e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party; or

f) a good set out in Annex 303.6.

7. Except for paragraph 2(d), this Article shall apply as of the date set out in each Party's Section of Annex 303.7.

8. Notwithstanding any other provision of this Article and except as specifically provided in Annex 303.8, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a non-originating good provided for in item 8540.11.aa (color cathode-ray television picture tubes, including video monitor tubes, with a diagonal exceeding 14 inches) or 8540.11.cc (color cathoderay television picture tubes for high definition television, with a diagonal exceeding 14 inches) that is imported into the Party's territory and subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party.

9. For purposes of this Article: customs duties are the customs duties that would be applicable to a good entered for consumption in the customs territory of a Party if the good were not exported to the territory of another party;

identical or similar goods means "identical or similar goods" as defined in Article 415 (Rules of Origin Definitions);

material means "material" as defined in Article 415; used means "used" as defined in Article 415. 10. For purposes of the Article: Where a good referred to by a tariff item number in this Article is described in parentheses following the tariff item number, the description is provided for purposes of reference only.

Article 304. Waiver of Customs Duties

1. Except as set out in Annex 304.1, no 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. Except as set out in Annex 304.2, no Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3. If a waiver or a combination of waivers of customs duties granted by a Party with respect to goods for commercial use by a designated person can be shown by another Party to have an adverse impact on the commercial interests of a person of that Party, or of a person owned or controlled by a person of that Party that is located in the territory of the Party granting the waiver, or on the other Party's economy, the Party granting the waiver shall either cease to grant it or make it generally

available to any importer.

4. This Article shall not apply to measures subject to Article 303.

Article 305. Temporary Admission of Goods

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

a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter Sixteen (Temporary Entry for Business Persons),

b) equipment for the press or for sound or television broadcasting and cinematographic equipment,

c) goods imported for sports purposes and goods intended for display or demonstration, and

d) commercial samples and advertising films, imported from the territory of another Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1a), (b) or (c), other than to require that such good:

a) be imported by a national or resident of another Party who seeks temporary entry;

b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;

c) not be sold or leased while in its territory;

d) be accompanied by a bond in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;

e) be capable of identification when exported;

f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and

g) be imported in no greater quantity than is reasonable for its intended use.

3. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

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

b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;

c) be capable of identification when exported;

d) be exported within such period as is reasonably related to the purpose of the temporary admission; and

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

4. A Party may impose the customs duty and any other charge on a good temporarily admitted duty-free under paragraph 1 that would be owed on entry or final importation of such good if any condition that the Party imposes under paragraph 2 or 3 has not been fulfilled.

5. Subject to Chapters Eleven (Investment) and Twelve (Cross Border Trade in Services):

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

b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a

vehicle or container into its territory on its exit through any particular port of departure; and

d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

6. For purposes of paragraph 5, "vehicle" means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 306. Duty-Free Entry of Certain Commercial Samples 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 another 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 another Party or 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.

Article 307. Goods Re-Entered after Repair or Alteration

1. Except as set out in Annex 307.1, no 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 another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Notwithstanding Article 303, no Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of another Party for repair or alteration.

3. Annex 307.3 applies to the Parties specified in that Annex respecting the repair and rebuilding of vessels.

Article 308. Most-Favored-Nation Rates of Duty on Certain Goods

1 Annex 308.1 applies to certain automatic data processing goods and their parts.

2. Annex 308.2 applies to certain color television tubes.

3. Each Party shall accord mostfavorednation duty-free treatment to any local area network apparatus imported into its territory, and shall consult in accordance with Annex 308.3.

Section C. Non-Tariff Measures

Article 309. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT, including its interpretative notes, and to this end Article XI of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made a part of this Agreement.

2. The Parties understand that the GATT rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

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

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

b) requiring as a condition of export of such good of the Party to the territory of another 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 request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 301.3.

Article 310. Customs User Fees

1. No Party may adopt any customs user fee of the type referred to in Annex 310.1 for originating goods.

2. The Parties specified in Annex 310.1 may maintain existing such fees in accordance with that Annex.

Article 311. Country of Origin Marking

Annex 311 applies to measures relating to country of origin marking.

Article 312. Wine and Distilled Spirits

1. No Party may adopt or maintain any measure requiring that distilled spirits imported from the territory of another Party for bottling be blended with any distilled spirits of the Party.

2. Annex 312.2 applies to other measures relating to wine and distilled spirits.

Article 313. Distinctive Products

Annex 313 applies to standards and labelling of the distinctive products set out in that Annex.

Article 314. Export Taxes

Except as set out in Annex 314, no Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

a) exports of any such good to the territory of all other Parties; and

b) any such good when destined for domestic consumption.

Article 315. Other Export Measures

1. Except as set out in Annex 315, a Party may adopt or maintain a restriction otherwise justified under Articles X1:2(a) or XX(g), G) or (j) of the GATT with respect to the export of a good of the Party to the territory of another Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36 month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of a good to that other Party than the price charged for such good when consumed domestically, by means of any measure, such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific goods or categories of goods supplied to that other Party.

2. The Parties shall cooperate in the maintenance and development of effective controls on the export of each other's goods to a non-Party in implementing this Article.

Section D. Consultations

Article 316. Consultations and Committee on Trade In Goods

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

2. The Committee shall meet on the request of any Party or the Commission to consider any matter arising under this Chapter.

3. The Parties shall convene at least once each year a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

Article 317. Third Country Dumping

1. The Parties affirm the importance of cooperation with respect to actions under Article 12 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

2. Where a Party presents an application to another Party requesting antidumping action on its behalf, those Parties shall consult within 30 days respecting the factual basis of the request, and the requested Party shall give full consideration to the request.

Section E. Definitions

Article 318. Definitions

For purposes of this Chapter:

advertising films means recorded visual media, with or without soundtracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment;

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 the currency of another Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

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;

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

a) charge equivalent to an internal tax imposed consistently with Article I:2 of the GATT, or any equivalent provision of a successor agreement to which all Parties are party, 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 not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

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

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

e) fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);

distilled spirits include distilled spirits and distilled spirit containing beverages;

duty deferral program includes measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

duty-free means free of customs duty;

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

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

item means a tariff classification item at the eight- or 10-digit level set out in a Party's tariff schedule;

local area network apparatus means a good dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units, including in-line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof suitable for use solely or principally with a private network, and providing for the transmission, receipt, error-checking, control, signal conversion or correction functions for non-voice data to move through a local area network;

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 be substituted for imported goods or services;

c) a person benefitting from a waiver of customs duties purchase other goods or services in the territory of the Party granting the waiver or accord a preference to domestically produced goods or services;

d) a person benefitting from a waiver of customs duties produce goods or provide services, in the territory of the Party granting the waiver, 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;

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;

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good;

satisfactory evidence means:

a) a receipt, or a copy of a receipt, evidencing payment of customs duties on a particular entry;

b) a copy of the entry document with evidence that it was received by a customs administration;

c) a copy of a final customs duty determination by a customs administration respecting the relevant entry;

d) any other evidence of payment of customs duties acceptable under the Uniform Regulations established in accordance with Chapter Five (Customs Procedures);

total export shipments means all shipments from total supply to users located in the territory of another Party;

total supply means all shipments, whether intended for domestic or foreign users, from:

a) domestic production;

b) domestic inventory; and

c) other imports as appropriate; and

waiver of customs duties means a measure that waives otherwise applicable customs duties on any good imported from any country, including the territory of another Party.

Chapter Four. RULES OF ORIGIN

Article 401. Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;

b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;

c) the good is produced entirely in the territory of one or more of the Parties exclusively from originating materials; or

d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or more of the Parties but one or more of the non-originating materials provided for as parts under the Harmonized System that are used in the production of the good does not undergo a change in tariff classification because

(i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

(ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the regional value content of the good, determined in accordance with Article 402, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter.

Article 402. Regional Value Content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.

2. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following transaction value method:

RVC = TV - VNM / TV x 100

where

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

TV is the transaction value of the good adjusted to a F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good.

3. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following net cost method:

RVC = NC - VNM / NC x 100

where

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

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good.

4. Except as provided in Article 403(1) and for a motor vehicle identified in Article 403(2) or a component identified in Annex 403.2, the value of non-originating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.

5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 3 where:

a) there is no transaction value for the good;

b) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;

c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period,

d) the good is

(i) a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06,

(ii) identified in Annex 403.1 or 403.2 and is for use in a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06,

(iii) provided for in subheading 6401.10 through 6406.10, or

(iv) provided for in tariff item 8469.10.aa (word processing machines);

e) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 404; or

f) the good is designated as an intermediate material under paragraph 10 and is subject to a regional value-content requirement.

6. If an exporter or producer of a good calculates the regional value-content of the good on the basis of the transaction value method set out in paragraph 2 and a Party subsequently notifies the exporter or producer, during the course of a verification pursuant to Chapter Five (Customs Procedures), that the transaction value of the good, or the value of any material used in the production of the good, is required to be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 3.

7. Nothing in paragraph 6 shall be construed to prevent any review or appeal available under Article 510 (Review and Appeal) of an adjustment to or a rejection of:

a) the transaction value of a good; or

b) the value of any material used in the production of a good.

8. For purposes of calculating the net cost of a good under paragraph 3, the producer of the good may:

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

b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing and aftersales service costs, royalties, shipping and packing costs and non allowable interest costs that are included in the portion of the total cost allocated to the good, or

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

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations, established under Article 511 (Customs Procedures Uniform Regulations).

9. Except as provided in paragraph 11, the value of a material used in the production of a good shall:

a) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or

b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and

c) where not included under subparagraph (a) or (b), include

(i) freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer,

(ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, and

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproduct.

10. Except as provided in Article 403(1), any self-produced material, other than a component identified in Annex 403.2, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under paragraph 2 or 3, provided that where the intermediate material is subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

11. The value of an intermediate material shall be:

a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that intermediate material; or

b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

12. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 403. Automotive Goods

1. For purposes of calculating the regional value content under the net cost method set out in Article 402(3) for:

a) a good that is a motor vehicle provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, or

b) a good provided for in the tariff provisions listed in Annex 403.1 where the good is subject to a regional value-content requirement and is for use as original equipment in the production of a good provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8702.xx, 8703.21 through 8703.90, 8704.21 or 8704.31, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of non-originating materials, determined in accordance with Article 402(9) at the time the non-originating materials are received by the first person in the territory of a Party who takes title to them, that are imported from outside the territories of the Parties under the tariff provisions listed in Annex 403.1 and that are used in the production of the good or that are used in the production of any material used in the production of the good.

2. For purposes of calculating the regional value content under the net cost method set out in Article 402(3) for a good that is a motor vehicle provided for in heading 87.01, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06, or for a component identified in Annex 403.2 for use as original equipment in the production of the motor vehicle, the value of non-originating materials used by the producer in the production of the good shall be the sum of:

a) for each material used by the producer listed in Annex 403.2, whether or not produced by the producer, at the choice of the producer and determined in accordance with Article 402, either

(i) the value of such material that is non originating, or

(ii) the value of non-originating materials used in the production of such material; and

b) the value of any other non-originating material used by the producer that is not listed in Annex 403.2, determined in accordance with Article 402.

3. For purposes of calculating the regional value content of a motor vehicle identified in paragraph 1 or 2, the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other Parties:

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

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

c) the same model line of motor vehicles produced in the territory of a Party; or

d) if applicable, the basis set out in Annex 403.3.

4. For purposes of calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex 403.1, or a component or material identified in Annex 403.2, produced in the same plant, the producer of the good may:

a) average its calculation

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

(ii) over any quarter or month, or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or

c) with respect to any calculation under this paragraph, calculate separately those goods that are exported to the territory of one or more of the Parties.

5. Notwithstanding Annex 401, and except as provided in paragraph 6, the regional value-content requirement shall be:

a) for a producer's fiscal year beginning on the day closest to January 1, 1998 and thereafter, 56 percent under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002 and thereafter, 62.5 percent under the net cost method, for

(i) a good that is a motor vehicle provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, and

(ii) a good provided for in heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle identified in subparagraph (a)(i); and

b) for a producer's fiscal year beginning on the day closest to January 1, 1998 and thereafter, 55 percent under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002 and thereafter, 60 percent under the net cost method, for

(i) a good that is a motor vehicle provided for in a tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.21 through 8703.90, 8704.21 or 8704.31, and

(ii) a good provided for in heading 84.07 or 84.08 or subheading 8708.40 that is for use in a motor vehicle identified in subparagraph (b)(i), and (ii) except for a good identified in subparagraph (a)(ii) or provided for in subheading 8482.10 through 8482.80, 8483.20 or 8483.30, a good identified in Annex 403.1 that is subject to a regional value content requirement and that is for use in a motor vehicle identified in subparagraphs (a)(i) or (b)(i).

6. The regional value-content requirement for a motor vehicle identified in Article 403(1) or 403(2) shall be: a) 50 percent for five years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if

(i) it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in Article 403(2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the Parties,

(ii) the plant consists of a new building in which the motor vehicle is assembled, and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

b) 50 percent for two years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a different motor vehicle of a class, or marque, or, except for a motor vehicle identified in Article 403(2), size category and underbody, than was assembled by the motor vehicle assembler in the plant before the refit.

Article 404. Accumulation

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of any of the Parties by that exporter or producer, provided that:

a) all non-originating materials used in the production of the good undergo an applicable tariff classification change set out

in Annex 401, and the good satisfies any applicable regional value-content requirement, entirely in the territory of one or more of the Parties; and

b) the good satisfies all other applicable requirements of this Chapter.

2. For purposes of Article 402(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph 1 shall be considered to be the production of a single producer.

Article 405. De Minimis

1. Except as provided in paragraphs 3 through 6, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 401 is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such non-originating materials is not more than seven percent of the total cost of the good, provided that:

a) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and

b) the good satisfies all other applicable requirements of this Chapter.

2. A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if the value of all non-originating materials used in the production of the good is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all non-originating materials is not more than seven percent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

3. Paragraph 1 does not apply to:

a) a non-originating material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

b) a non-originating material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in tariff item 1901.10.aa (infant preparations containing over 10 percent by weight of milk solids), 1901.20.aa (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids), heading 21.05, or tariff item 2106.90.dd (preparations containing over 10 percent by weight of milk solids), 2202.90.cc (beverages containing milk) or 2309.90.aa (animal feeds containing over 10 percent by weight of milk solids);

c) a non-originating material provided for in heading 08.05 or subheading 2009.11 through 2009.30 that is used in the production of a good provided for in subheading 2009.11 through 2009.30 or tariff item 2106.90.bb (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) or 2202.90.aa (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

d) a non-originating material provided for in Chapter 9 of the Harmonized System that is used in the production of a good provided for in tariff item 2101.10.aa (instant coffee, not flavored);

e) a non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in heading 15.01 through 15.08, 15.12, 15.14 or 15.15;

f) a non-originating material provided for in heading 17.01 that is used in the production of a good provided for in heading 17.01 through 17.03;

g) a non-originating material provided for in Chapter 17 of the Harmonized System or heading 18.05 that is used in the production of a good provided for in subheading 1806.10;

h) a non-originating material provided for in heading 22.03 through 22.08 that is used in the production of a good provided for in heading 22.07 through 22.08;

i) a non-originating material used in the production of a good provided for in tariff item 7321.11.aa (gas stove or range), subheading 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 or 8451.21 through 8451.29, Mexican tariff item 8479.82.aa (trash compactors) or Canadian or US.

tariff item 8479.89.aa (trash compactors), or tariff item 8516.60.aa (electric stove or range); and

j) a printed circuit assembly that is a non-originating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401, places restrictions on the use of such non-originating material.

4. Paragraph 1 does not apply to a non-originating single juice ingredient provided for in heading 20.09 that is used in the production of a good provided for in subheading 2009.90, or tariff item 2106.90.cc (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) or 2202.90.bb (mixtures of fruit or vegetable juices, fortified with minerals or vitamins).

5. Paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapter 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

6. A good provided for in Chapter 50 through 63 of the Harmonized System that does not originate 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 401, shall nonetheless be considered to originate 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.

Article 406. Fungible Goods and Materials for Purposes of Determining Whether a Good Is an Originating Good:

a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations; and

b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in the Uniform Regulations.

Article 407. Accessories, Spare Parts and Tools

Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools, shall be considered as originating if the good originates and shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 401, provided that:

a) the accessories, spare parts or tools are not invoiced separately from the good,

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

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

Article 408. Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is produced.

Article 409. Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 401, and, if the good is subject to a regional valuecontent requirement, the value of such packaging materials and containers shall be taken into account as originating or non originating materials, as the case may be, in calculating the regional value content of the good.

Article 410. Packing Materials and Containers for Shipment

Packing materials and containers in which the good is packed for shipment shall be disregarded in determining whether:

a) the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401; and

b) the good satisfies a regional valuecontent requirement.

Article 411. Trans-shipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 401 if, subsequent to that production, the good undergoes further production 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 a Party.

Article 412. Non-Qualifying Operations

A good shall not be considered to be an originating good merely by reason of:

a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

Article 413. Interpretation and Application

For purposes of this Chapter:

a) the basis for tariff classification in this Chapter is the Harmonized System;

b) where a good referred to by a tariff item number is described in parentheses following the tariff item number, the description is provided for purposes of reference only;

c) where applying Article 401(d), the determination of whether a heading or subheading under the Harmonized System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, or the General Rules of Interpretation, the Chapter Notes or the Section Notes of the Harmonized System;

d) in applying the Customs Valuation Code under this Chapter,

(i) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions,

(ii) the provisions of this Chapter shall take precedence over the Customs Valuation Code to the extent of any difference, and

(iii) the definitions in Article 415 shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference; and

c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 414. Consultation and Modifications

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

2. Any Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration and any appropriate action under Chapter Five.

Article 415. Definitions

For purposes of this Chapter:

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

a) motor vehicles provided for in subheading 8701.20, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 and 87.06;

b) motor vehicles provided for in subheading 8701.10 or 8701.30 through 8701.90;

c) motor vehicles provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8704.21 and 8704.31; or

d) motor vehicles provided for in subheading 8703.21 through 8703.90;

F.O.B. means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

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

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

a) mineral goods extracted in the territory of one or more of the Parties;

b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or more of the Parties;

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

d) goods obtained from hunting, trapping or fishing in the territory of one or more of the Parties;

e) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

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

g) 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;

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

i) waste and scrap derived from

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

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

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

identical or similar goods means "identical goods" and "similar goods", respectively, as defined in the Customs Valuation Code;

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

a) fuel and energy;

b) tools, dies and molds;

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

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

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

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

g) catalysts and solvents; and

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

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article 402(10);

Marque means the trade name used by a separate marketing division of a motor vehicle assembler;

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

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

motor vehicle assembler means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

new building means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical and other utilities to house a complete vehicle assembly process;

net cost means total cost minus sales promotion, marketing and aftersales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost;

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the applicable federal government interest rate identified in the Uniform Regulations for comparable maturities;

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

producer means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

production means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

refit means a plant closure, for purposes of plant conversion or retooling, that lasts at least three months;

related person means a person related to another person on the basis that:

a) they are officers or directors of one another's businesses;

b) they are legally recognized partners in business;

c) they are employer and employee;

d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them;

e) one of them directly or indirectly controls the other;

f) both of them are directly or indirectly controlled by a third person; or

g) they are members of the same family (members of the same family are natural or adoptive children, brothers, sisters, parents, grandparents, or spouses);

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

a) personnel training, without regard to where performed; and

b) if performed in the territory of one or more of the Parties, engineering, tooling, diesetting, software design and similar

computer services, or other services;

sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and aftersales service:

a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials, exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and aftersales service personnel;

d) recruiting and training of sales promotion, marketing and aftersales service personnel, and aftersales training of customers' employees, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

e) product liability insurance;

f) office supplies for sales promotion, marketing and aftersales service of goods, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer;

h) rent and depreciation of sales promotion, marketing and aftersales service offices and distribution centers;

i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and aftersales service of goods on the financial statements or cost accounts of the producer; and

j) payments by the producer to other persons for warranty repairs;

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

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

size category means for a motor vehicle identified in Article 403(1)(a):

a) 85 or less cubic feet of passenger and luggage interior volume,

b) between 85 and 100 cubic feet of passenger and luggage interior volume,

c) 100 to 110 cubic feet of passenger and luggage interior volume,

d) between 110 and 120 cubic feet of passenger and luggage interior volume, and

e) 120 and more cubic feet of passenger and luggage interior volume;

total cost means all product costs, period costs and other costs incurred in the territory of one or more of the Parties;

transaction value means the price actually paid or payable for a good or material with respect to a transaction of, except for the application of Article 403(1) or 403(2)(a), the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good or material is sold for export;

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

underbody means the floor pan of a motor vehicle.

Chapter Five. CUSTOMS PROCEDURES

Section A. Certification of Origin

Article 501. Certificate of Origin

1. The Parties shall establish by January 1, 1994 a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.

2. Each Party may require that a Certificate of Origin for a good imported into its territory be completed in a language required under its law.

3. Each Party shall:

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

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

(i) its knowledge of whether the good qualifies as an originating good,

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

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

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Certificate of Origin to an exporter.

5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of another Party that is applicable to:

a) a single importation of a good into the Party's territory, or

b) multiple importations of identical goods into the Party's territory that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer,

shall be accepted by its customs administration for four years after the date on which the Certificate was signed.

Article 502. Obligations Regarding Importations

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of another Party to:

a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

b) have the Certificate in its possession at the time the declaration is made;

c) provide, on the request of that Party's customs administration, a copy of the Certificate; and

d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Each Party shall provide that, where an importer in its territory claims preferential tariff treatment for a good imported into its territory from the territory of another Party:

a) the Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and

b) the importer shall not be subject to penalties for the making of an incorrect declaration, if it voluntarily makes a corrected declaration pursuant to paragraph 1(d).

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:

a) a written declaration that the good qualified as an originating good at the time of importation;

b) a copy of the Certificate of Origin; and

c) such other documentation relating to the importation of the good as that Party may require.

Article 503. Exceptions

Each Party shall provide that a Certificate of Origin shall not be required for:

a) a commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good,

b) a non-commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, or

c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 501 and 502.

Article 504. Obligations Regarding Exportations

1. Each Party shall provide that:

a) an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter pursuant to Article 501(3)(b)Gii), shall provide a copy of the Certificate to its customs administration on request; and

b) an exporter or a producer in its territory that has completed and signed a Certificate of Origin, and that has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

2. Each Party:

a) shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation; and

b) may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

3. No Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) with respect to the making of an incorrect certification.

Section B. Administration and Enforcement

Article 505. Records

Each Party shall provide that:

a) an exporter or a producer in its territory that completes and signs a Certificate of Origin shall maintain in its territory, for five years after the date on which the Certificate was signed or for such longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of another Party, including records associated with

(i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory,

(ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and

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

b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate, as the Party may require relating to the importation of the good.

Article 506. Origin Verifications

1. For purposes of determining whether a good imported into its territory from the territory of another Party qualifies as an originating good, a Party may, through its customs administration, conduct a verification solely by means of:

a) written questionnaires to an exporter or a producer in the territory of another Party;

b) visits to the premises of an exporter or a producer in the territory of another Party to review the records referred to in Article 505(a) and observe the facilities used in the production of the good; or

c) such other procedure as the Parties may agree.

2. Prior to conducting a verification visit pursuant to paragraph (1)(b), a Party shall, through its customs administration:

a) deliver a written notification of its intention to conduct the visit to

(i) the exporter or producer whose premises are to be visited,

(ii) the customs administration of the Party in whose territory the visit is to occur, and

(iii) if requested by the Party in whose territory the visit is to occur, the embassy of that Party in the territory of the Party proposing to conduct the visit; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

3. The notification referred to in paragraph 2 shall include:

a) the identity of the customs administration issuing the notification;

b) the name of the exporter or producer whose premises are to be visited;

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

d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;

e) the names and titles of the officials performing the verification visit; and

f) the legal authority for the verification visit

4. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 2, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

5. Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 2, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree.

6. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 5.

7. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by another Party to designate two observers to be present during the visit, provided that:

a) the observers do not participate in a manner other than as observers; and

b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

8. Each Party shall, through its customs administration, conduct a verification of a regional value-content requirement in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party from which the good was exported.

9. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification

with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

10. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter Four (Rules of Origin).

11. Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the Party from whose territory the good was exported, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

12. A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination where:

a) the customs administration of the Party from whose territory the good was exported has issued an advance ruling under Article 509 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and

b) the advance ruling or consistent treatment was given prior to notification of the determination.

13. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 11, it shall postpone the effective date of the denial for a period not exceeding 90 days where the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the Party from whose territory the good was exported.

Article 507. Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

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

Article 508. Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

2. Nothing in Articles 502(2), 504(3) or 506(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Section C. Advance Rulings

Article 509. Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of another Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

a) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties;

b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter Four;

c) for the purpose of determining whether a good satisfies a regional value- content requirement under Chapter Four, the

appropriate basis or method for value to be applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good;

d) for the purpose of determining whether a good satisfies a regional value- content requirement under Chapter Four, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of the good or the value of an intermediate material;

e) whether a good qualifies as an originating good under Chapter Four;

f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for dutyfree treatment in accordance with Article 307 (Goods Re- Entered after Repair or Alteration);

g) whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 311 (Country of Origin Marking);

h) whether an originating good qualifies as a good of a Party under Annex 300B (Textile and Apparel Goods), Annex 302.2 (Tariff Elimination) or Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);

i) whether a good is a qualifying good under Chapter Seven; or

j) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall provide that its customs administration:

a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;

b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within the periods specified in the Uniform Regulations; and

c) shall, where the advance ruling is unfavorable to the person requesting it, provide to that person a full explanation of the reasons for the ruling.

4. Subject to paragraph 6, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.

5. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter Four regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

6. The issuing Party may modify or revoke an advance ruling:

a) if the ruling is based on an error

(i) of fact,

(ii) in the tariff classification of a good or a material that is the subject of the ruling,

(iii) in the application of a regional value content requirement under Chapter Four,

(iv) in the application of the rules for determining whether a good qualifies as a good of a Party under Annex 300B, 302.2 or Chapter Seven,

(v) in the application of the rules for determining whether a good is a qualifying good under Chapter Seven, or

(vi) in the application of the rules for determining whether a good that re- enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for dutyfree treatment under Article 307;

b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter Three (National Treatment and Market Access for Goods) or Chapter Four;

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

d) to conform with a modification of Chapter Three, Chapter Four, this Chapter, Chapter Seven, the Marking Rules or the Uniform Regulations; or

e) to conform with a judicial decision or a change in its domestic law.

7. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

8. Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advance ruling was issued demostrates that it has relied in good faith to its detriment on that ruling.

9. Each Party shall provide that where its customs administration examines the regional value content of a good for which it has issued an advance ruling pursuant to subparagraph 1(c), (d) or f), it shall evaluate whether:

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

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

c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

10. Each Party shall provide that where its customs administration determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

11. Each Party shall provide that, where the person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and where the customs administration of a Party determines that the ruling was based on incorrect information, the person to whom the tuling was issued shall not be subject to penalties.

12, Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as the circumstances may warrant.

Section D. Review and Appeal of Origin Determinations and Advance Rulings

Article 510. Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of marking determinations of origin, country of origin determinations and advance rulings by its customs administration as it provides to importers in its territory to any person:

a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin;

b) whose good has been the subject of a country of origin marking determination pursuant to Article 311 (Country of Origin Marking); or

c) who has received an advance ruling pursuant to Article 509(1).

2. Further to Articles 1804 (Administrative Proceedings) and 1805 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

a) at least one level of administrative review independent of the official or office responsible for the determination under review; and

b) in accordance with its domestic law, judicial or quasijudicial review of the determination or decision taken at the final level of administrative review.

Section E. Uniform Regulations

Article 511. Uniform Regulations

1. The Parties shall establish, and implement through their respective laws or regulations by January 1, 1994, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, this Chapter and other matters as may be agreed by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Section F. Cooperation

Article 512. Cooperation

1. Each Party shall notify the other Parties of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

a) a determination of origin issued as the result of a verification conducted pursuant to Article 506(1);

b) a determination of origin that the Party is aware is contrary to

(i) a ruling issued by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin, or

(ii) consistent treatment given by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;

c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin, country of origin marking requirements or determinations as to whether a good qualifies as a good of a Party under the Marking Rules; and

d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article 509.

2. The Parties shall cooperate:

a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreements or other customsrelated agreement to which they are party;

b) for purposes of the detection and prevention of unlawful transshipments of textile and apparel goods of a non-Party, in the enforcement of prohibitions or quantitative restrictions, including the verification by a Party, in accordance with the procedures set out in this Chapter, of the capacity for production of goods by an exporter or a producer in the territory of another Party, provided that the customs administration of the Party proposing to conduct the verification, prior to conducting the verification

(i) obtains the consent of the Party in whose territory the verification is to occur, and

(ii) provides notification to the exporter or producer whose premises are to be visited,

except that procedures for notifying the exporter or producer whose premises are to be visited shall be in accordance with such other procedures as the Parties may agree;

c) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information; and

d) to the extent practicable, in the storage and transmission of customs-related documentation.

Article 513. Working Group and Customs Subgroup

1. The Parties hereby establish a Working Group on Rules of Origin, comprising representatives of each Party, to ensure:

a) the effective implementation and administration of Articles 303 (Restriction on Drawback and Duty Deferral Programs), 308 (Most-Favored-Nation Rates of Duty on Certain Goods) and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations; and

b) the effective administration of the customsrelated aspects of Chapter Three.

2. The Working Group shall meet at least four times each year and on the request of any Party.

3. The Working Group shall:

a) monitor the implementation and administration by the customs administrations of the Parties of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations to ensure their uniform interpretation;

b) endeavor to agree, on the request of any Party, on any proposed modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules or the Uniform Regulations;

c) notify the Commission of any agreed modification of or addition to the Uniform Regulations;

d) propose to the Commission any modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules, the Uniform Regulations or any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and

e) consider any other matter referred to it by a Party or by the Customs Subgroup established under paragraph 6.

4. Each Party shall, to the greatest extent practicable, take all necessary measures to implement any modification of or addition to this Agreement within 180 days of the date on which the Commission agrees on the modification or addition.

5. If the Working Group fails to resolve a matter referred to it pursuant to paragraph 3(e) within 30 days of such referral, any Party may request a meeting of the Commission under Article 2007 (Commission Good Offices, Conciliation and Mediation).

6. The Working Group shall establish, and monitor the work of, a Customs Subgroup, comprising representatives of each Party. The Subgroup shall meet at least four times each year and on the request of any Party and shall:

a) endeavor to agree on

(i) the uniform interpretation, application and administration of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations,

(ii) tariff classification and valuation matters relating to determinations of origin,

(iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,

(iv) revisions to the Certificate of Origin,

(v) any other matter referred to it by a Party, the Working Group or the Committee on Trade in Goods established under Article 316, and

(vi) any other customs-related matter arising under this Agreement; b) consider

(i) the harmonization of customs-related automation requirements and documentation, and

(ii) proposed customs-related administrative and operational changes that may affect the flow of trade between the Parties' territories;

c) report periodically to the Working Group and notify it of any agreement reached under this paragraph; and

d) refer to the Working Group any matter on which it has been unable to reach agreement within 60 days of referral of the matter to it pursuant to subparagraph (a)(v).

7. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Working Group or the Customs Subgroup or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

Article 514. Definitions

For purposes of this Chapter:

commercial importation means the importation of a good into the territory of any Party for the purpose of sale, or any commercial, industrial or other like use;

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

determination of origin means a determination as to whether a good qualifies as an originating good in accordance with Chapter Four;

exporter in the territory of a Party means an exporter located in the territory of a Party and an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

identical goods means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter Four; importer in the territory of a Party means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

intermediate material means "intermediate material" as defined in Article 415; Marking Rules means "Marking Rules" established under Annex 311;

material means "material" as defined in Article 415;

net cost of a good means "net cost of a good" as defined in Article 415; preferential tariff treatment means the duty rate applicable to an originating good; producer means "producer" as defined in Article 415;

production means "production" as defined in Article 415;

transaction value means "transaction value" as defined in Article 415;

Uniform Regulations means "Uniform Regulations" established under Article 511; used means "used" as defined in Article 415; and

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

Chapter Six. ENERGY AND BASIC PETROCHEMICALS

Article 601. Principles

1. The Parties confirm their full respect for their Constitutions.

2. The Parties recognize that it is desirable to strengthen the important role that trade in energy and basic petrochemical goods plays in the free trade area and to enhance this role through sustained and gradual liberalization.

3. The Parties recognize the importance of having viable and internationally competitive energy and petrochemical sectors to further their individual national interests.

Article 602. Scope and Coverage

1. This Chapter applies to measures relating to energy and basic petrochemical goods originating in the territories of the Parties and to measures relating to investment and to the cross-border trade in services associated with such goods, as set forth in this Chapter

2. For purposes of this Chapter, energy and basic petrochemical goods refer to those goods classified under the Harmonized System as:

a) subheading 2612.10;

b) headings 27.01 through 27.06;

c) subheading 2707.50;

d) subheading 2707.99 (only with respect to solvent naphtha, rubber extender oils and carbon black feedstocks);

e) headings 27.08 and 27.09;

f) heading 27.10 (except for normal paraffin mixtures in the range of C9 to C15);

g) heading 27.11 (except for ethylene, propylene, butylene and butadiene in purities over 50 percent);

h) headings 27.12 through 27.16;

i) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings);

j) subheading 2845.10; and

k) subheading 2901.10 (only with respect to ethane, butanes, pentanes, hexanes, and heptanes).

3. Except as specified in Annex 602.3, energy and petrochemical goods and activities shall be governed by the provisions of this Agreement.

Article 603. Import and Export Restrictions

1 Subject to the further rights and obligations of this Agreement, the Parties incorporate the provisions of the General Agreement on Tariffs and Trade (GATT), with respect to prohibitions or restrictions on trade in energy and basic petrochemical goods. The Parties agree that this language does not incorporate their respective protocols of provisional application to the GATT.

2. The Parties understand that the provisions of the GATT incorporated in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum or maximum export - price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum or maximum import-price requirements.

3. In circumstances where a Party adopts or maintains a restriction on importation from or exportation to a non-Party of an energy or basic petrochemical good, nothing in this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of any Party of such energy or basic petrochemical good of the nonParty; or

b) requiring as a condition of export of such energy or basic petrochemical good of the Party to the territory of any other Party that the good be consumed within the territory of the other Party.

4. In the event that a Party adopts or maintains a restriction on imports of an energy or basic petrochemical good from non-Party countries, the Parties, on request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Each Party may administer a system of import and export licensing for energy or basic petrochemical goods provided that such system is operated in a manner consistent with the provisions of this Agreement, including paragraph 1 and Article 1502 (Monopolies and State Enterprises).

6. This Article is subject to the reservations set out in Annex 603.6.

Article 604. Export Taxes

No Party may adopt or maintain any duty, tax or other charge on the export of any energy or basic petrochemical good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

a) exports of any such good to the territory of all other Parties; and

b) any such good when destined for domestic consumption.

Article 605. Other Export Measures

Subject to Annex 605, a Party may adopt or maintain a restriction otherwise justified under Articles XI:2(a) or XX(g), G) or (j) of the GATT with respect to the export of an energy or basic petrochemical good to the territory of another Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36 month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to that other Party than the price charged for such good when consumed domestically, by means of any measure such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific energy or basic petrochemical goods supplied to that other Party, such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

Article 606. Energy Regulatory Measures

1. The Parties recognize that energy regulatory measures are subject to the disciplines of:

a) national treatment, as provided in Article 301;

b) import and export restrictions, as provided in Article 603; and

c) export taxes, as provided in Article 604.

2. Each Party shall seek to ensure that in the application of any energy regulatory measure, energy regulatory bodies within its territory avoid disruption of contractual relationships to the maximum extent practicable, and provide for orderly and equitable implementation appropriate to such measures.

Article 607. National Security Measures

Subject to Annex 607, no Party may adopt or maintain a measure restricting imports of an energy or basic petrochemical good from, or exports of an energy or basic petrochemical good to, another Party under Article XXI of the GATT or under Article 2102 (National Security), except to the extent necessary to:

a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party;

b) respond to a situation of armed conflict involving the Party taking the measure;

c) implement national policies or international agreements relating to the non- proliferation of nuclear weapons or other nuclear explosive devices; or

d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

Article 608. Miscellaneous Provisions

1. The Parties agree to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

2. Annex 608.2 applies only to the Parties specified in that Annex with respect to other agreements relating to trade in energy goods.

Article 609. Definitions

For purposes of this Chapter:

consumed means transformed so as to qualify under the rules of origin set out in Chapter Four (Rules of Origin), or actually consumed;

cross-border trade in services means "crossborder trade in services" as defined in Article 1213 (Cross-Border Trade in Services Definitions);

energy regulatory measure means any measure by federal or sub-federal entities that directly affects the transportation, transmission or distribution, purchase or sale, of an energy or basic petrochemical good;

enterprise means "enterprise" as defined in Article 1139 (Investment-Definitions); enterprise of a Party means "enterprise of a Party" as defined in Article 1139; facility for independent power production means a facility that is used for the generation of electric energy exclusively for sale to an electric utility for further resale;

first hand sale refers to the first commercial transaction affecting the good in question;

first hand sale refers to the first commercial transaction affecting the good in question;

investment means investment as defined in Article 1139;

restriction means any limitation, whether made effective through quotas, licenses, permits, minimum or maximum price requirements or any other means;

total export shipments means the total shipments from total supply to users located in the territory of the other Party; and

total supply means shipments to domestic users and foreign users from:

a) domestic production;

b) domestic inventory; and

c) other imports, as appropriate.

Annex 602.3. Reservations and Special Provisions

Reservations

1. The Mexican State reserves to itself the following strategic activities, including investment in such activities and the provision of services in such activities:

a) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks and pipelines;

b) foreign trade; transportation, storage and distribution, up to and including the first hand sales of the following goods:

(i) crude oil,

(ii) natural and artificial gas,

(iii) goods covered by this Chapter obtained from the refining or processing of crude oil and natural gas, and

(iv) basic petrochemicals;

c) the supply of electricity as a public service in Mexico, including, except as provided in paragraph 5, the generation, transmission, transformation, distribution and sale of electricity; and

d) exploration, exploitation and processing of radioactive minerals, the nuclear fuel cycle, the generation of nuclear energy, the transportation and storage of nuclear waste, the use and reprocessing of nuclear fuel and the regulation of their applications for other purposes and the production of heavy water.

In the event of an inconsistency between this paragraph and another provision of this Agreement, this paragraph shall prevail to the extent of that inconsistency.

2. Pursuant to Article 1101(2), (nvestment-Scope and Coverage), private investment is not permitted in the activities listed in paragraph 1. Chapter Twelve (CrossBorder Trade in Services) shall only apply to activities involving the provision of services covered in paragraph 1 when Mexico permits a contract to be granted in respect of such activities and only to the extent of that contract.

Trade in Natural Gas and Basic Petrochemicals

3. Where end-users and suppliers of natural gas or basic petrochemical goods consider that cross-border trade in such goods may be in their interests, each Party shall permit such end-users and suppliers, and any state enterprise of that Party as may be required under its domestic law, to negotiate supply contracts.

Each Party shall leave the modalities of the implementation of any such contract to the endusers, suppliers, and any state enterprise of the Party as may be required under its domestic law, which may take the form of individual contracts between

the state enterprise and each of the other entities. Such contracts may be subject to regulatory approval.

Performance Clauses

4. Each Party shall allow its state enterprises to negotiate performance clauses in their service contracts.

Activities and Investment in Electricity Generation Facilities

a) Production for Own Use

An enterprise of another Party may acquire, establish, and/or operate an electrical generating facility in Mexico to meet the enterprise's own supply needs. Electricity generated in excess of such needs must be sold to the Federal Electricity Commission (Comisi n Federal de Electricidad) (CFE) and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

b) Co-generation

An enterprise of another Party may acquire, establish, and/or operate a co-generation facility in Mexico that generates electricity using heat, steam or other energy sources associated with an industrial process. Owners of the industrial facility need not be the owners of the co-generating facility. Electricity generated in excess of the industrial facility's supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

c) Independent Power Production

An enterprise of another Party may acquire, establish, and/or operate an electricity generating facility for independent power production (IPP) in Mexico. Electricity generated by such a facility for sale in Mexico shall be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise. Where an IPP located in Mexico and an electric utility of another Party consider that cross-border trade in electricity may be in their interests, each relevant Party shall permit these entities and CFE to negotiate terms and conditions of power purchase and power sale contracts. The modalities of implementing such supply contracts are left to the end users, suppliers and CFE and may take the form of individual contracts between CFE and each of the other entities. Each relevant Party shall determine whether such contracts are subject to regulatory approval.

Chapter Seven. AGRICULTURE AND SANITARY AND PHYTOSANITARY MEASURES

Section A. Agriculture

Article 701. Scope and Coverage

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

2. In the event of any inconsistency between this Section and another provision of this Agreement, this Section shall prevail to the extent of the inconsistency.

Article 702. International Obligations

1. Annex 702.1 applies to the Parties specified in that Annex with respect to agricultural trade under certain agreements between them.

2. Prior to adopting pursuant to an intergovernmental commodity agreement, a measure that may affect trade in an agricultural good between the Parties, the Party proposing to adopt the measure shall consult with the other Parties with a view to avoiding nullification or impairment of a concession granted by that Party in its Schedule to Annex 302.2.

3. Annex 702.3 applies to the Parties specified in that Annex with respect to measures adopted or maintained pursuant to an intergovernmental coffee agreement.

Article 703. Market Access

1. The Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods.

Customs Duties, Quantitative Restrictions, and Agricultural Grading and Marketing Standards

2. Annex 703.2 applies to the Parties specified in that Annex with respect to customs duties and quantitative restrictions, trade in sugar and syrup goods, and agricultural grading and marketing standards.

Special Safeguard Provisions

3. Each Party may, in accordance with its Schedule to Annex 302.2, adopt or maintain a special safeguard in the form of a tariff rate quota on an agricultural good listed in its Section of Annex 703.3. Notwithstanding Article 302.2, a Party may not apply an over-quota tariff rate under a special safeguard that exceeds the lesser of:

a) the most-favored-nation (MEN) rate as of July 1, 1991; and

b) the prevailing MFN rate. 4. No Party may, with respect to the same good and the same country, at the same time:

a) apply an over-quota tariff rate under paragraph 3; and

b) take an emergency action covered by Chapter Eight (Emergency Action).

Article 704. Domestic Support

The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects and that domestic support reduction commitments may result from agricultural multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). Accordingly, where a Party supports its agricultural producers, that Party should endeavor to work toward domestic support measures that:

a) have minimal or no trade distorting or production effects; or

b) are exempt from any applicable domestic support reduction commitments that may be negotiated under the GATT.

The Parties further recognize that a Party may change its domestic support measures, including those that may be subject to reduction commitments, at the Party's discretion, subject to its rights and obligations under the GATT.

Article 705. Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve an agreement under the GATT to eliminate those subsidies.

2. The Parties recognize that export subsidies for agricultural goods may prejudice the interests of importing and exporting Parties and, in particular, may disrupt the markets of importing Parties. Accordingly, in addition to the rights and obligations of the Parties specified in Annex 702.1, the Parties affirm that it is inappropriate for a Party to provide an export subsidy for an agricultural good exported to the territory of another Party where there are no other subsidized imports of that good into the territory of that other Party.

3. Except as provided in Annex 702.1, where an exporting Party considers that a non- Party is exporting an agricultural good to the territory of another 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 any such subsidized imports. If the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

4. Except as provided in Annex 702.1, an exporting Party shall deliver written notice to the importing Party at least three days, excluding weekends, prior to adopting an export subsidy measure on an agricultural good exported to the territory of another Party. The exporting Party shall consult with the importing Party within 72 hours of receipt of the importing Party's written request, with a view to eliminating the subsidy or minimizing any adverse impact on the market of the importing Party for that good. The importing Party shall, when requesting consultations with the exporting Party, at the same time, deliver written notice to a third Party of the request. A third Party may request to participate in such consultations.

5. Each Party shall take into account the interests of the other Parties in the use of any export subsidy on an agricultural good, recognizing that such subsidies may have prejudicial effects on the interests of the other Parties.

6. The Parties hereby establish a Working Group on Agricultural Subsidies, comprising representatives of each Party, which shall meet at least semi-annually or as the Parties may otherwise agree, to work toward elimination of all export subsidies affecting agricultural trade between the Parties. The functions of the Working Group shall include:

a) monitoring the volume and price of imports into the territory of any Party of agricultural goods that have benefitted from export subsidies;

b) providing a forum for the Parties to develop mutually acceptable criteria and procedures for reaching agreement on the limitation or elimination of export subsidies for imports of agricultural goods into the territories of the Parties; and

c) reporting annually to the Committee on Agricultural Trade, established under Article 706, on the implementation of this Article.

7. Notwithstanding any other provision of this Article:

a) if the importing and exporting Parties agree to an export subsidy for an agricultural good exported to the territory of the importing Party, the exporting Party or Parties may adopt or maintain such subsidy; and

b) each Party retains its rights to apply countervailing duties to subsidized imports of agricultural goods from the territory of a Party or non-Party.

Article 706. Committee on Agricultural Trade

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

2. The Committee's functions shall include: a) monitoring and promoting cooperation on the implementation and administration of this Section;

b) providing a forum for the Parties to consult on issues related to this Section at least semi-annually and as the Parties may otherwise agree; and

c) reporting annually to the Commission on the implementation of this Section.

Article 707. Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods

The Committee shall establish an Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprising persons with expertise or experience in the resolution of private commercial disputes in agricultural trade. The Advisory Committee shall report and provide recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods.

Article 708. Definitions

For purposes of this Section:

Agricultural Good Means a Good Provided for In Any of the Following:

Note: (For purposes of reference only, descriptions are provided next to the corresponding tariff provision.)

(a) Harmonized System (HS) Chapters 1 through 24 (other than a fish or fish product); or

(b) HS subheading 2905.43 manitol

HS subheading 2905.44 sorbitol

HS heading 33.01 essential oils

HS headings 35.01 to 35.05 albuminoidal substances, modified starches, glues

HS subheading 3809.10 finishing agents

HS subheading 3823.60 sorbitol n.e.p.

HS headings 41.01 to 41.03 hides and skins

HS heading 43.01 raw furskins

HS headings 50.01 to 50.03 raw silk and silk waste

HS headings 51.01 to 51.03 wool and animal hair

HS headings 52.01 to 52.03 raw cotton, cotton waste and cotton carded or combed

HS heading 53.01 raw flax

HS heading 53.02 raw hemp

customs duty means "customs duty" as defined in Article 318 (National Treatment and Market Access for Goods - Definitions);

duty-free means "duty-free" as defined in Article 318;

fish or fish product means a fish or crustacean, mollusc or other aquatic invertebrate, marine mammal, or a product thereof provided for in any of the following:

HS Chapter 03 fish and crustaceans, molluscs and other aquatic invertebrates

HS heading 05.07 tortoise-shell, whalebone and whalebone hair and those fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within this heading

HS heading 05.08 coral and similar materials

HS heading 05.09 natural sponges of animal origin

HS heading 05.11 products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3

HS heading 15.04 fats and oils and their fractions, of fish or marine mammals

HS heading 16.03 "non-meat" extracts and juices

HS heading 16.04 prepared or preserved fish

HS heading 16.05 prepared preserved crustaceans, molluscs and other aquatic invertebrates;

HS subheading 2301.20 flours, meals, pellets of fish

material means "material" as defined in Article 415 (Rules of Origin - Definitions);

over-quota tariff rate means the rate of customs duty to be applied to quantities in excess of the quantity specified under a tariff rate quota;

sugar or syrup good means "sugar or syrup good" as defined in Annex 703.2; tariff item means a âtariff item" as defined in Annex 401; and tariff rate quota means a mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good up to a specified quantity Gn- quota quantity), and at a different rate to imports of that good that exceed that quantity.

Section B. Sanitary and Phytosanitary Measures

Article 709. Scope and Coverage

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures, this Section applies to any such measure of a Party that may, directly or indirectly, affect trade between the Parties.

Article 710. Relation to other Chapters

Articles 301 (National Treatment) and 309 (Import and Export Restrictions), and the provisions of Article XX(b) of the GATT as incorporated into Article 2101(1) (General Exceptions), do not apply to any sanitary or phytosanitary measure.

Article 711. Reliance on Non-Governmental Entities

Each Party shall ensure that any non-governmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with this Section.

Article 712. Basic Rights and Obligations

Right to Take Sanitary and Phytosanitary Measures

1. Each Party may, in accordance with this Section, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Section, each Party may, in protecting human, animal or plant life or health, establish its appropriate levels of protection in accordance with Article 715.

Scientific Principles

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is:

a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;

b) not maintained where there is no longer a scientific basis for it; and c) based on a risk assessment, as appropriate to the circumstances. Non-Discriminatory Treatment

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

Unnecessary Obstacles

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

Article 713. International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Partyshall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, guideline or recommendation shall be presumed to be consistent with Article 712. A measure that results in a level of sanitary or phytosanitary protection different from that which would be achieved by a measure based on a relevant international standard, guideline or recommendation shall not for that reason alone be presumed to be inconsistent with this Section.

3. Nothing in Paragraph 1 shall be construed to prevent a Party from adopting, maintaining or applying, in accordance with the other provisions of this Section, a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation.

4. Where a Party has reason to believe that a sanitary or phytosanitary measure of another Party is adversely affecting or may adversely affect its exports and the measure is not based on a relevant international standard, guideline or recommendation, it may request, and the other Party shall provide in writing, the reasons for the measure.

5. Each Party shall, to the greatest extent practicable, participate in relevant international and North American standardizing organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention, and the North American Plant Protection Organization, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

Article 714. Equivalence

1. Without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Section, pursue equivalence of their respective sanitary and phytosanitary measures.

2. Each importing Party:

a) shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed on by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;

b) may, where it has a scientific basis, determine that the exporting Party's measure does not achieve the importing Party's appropriate level of protection; and

c) shall provide to the exporting Party, on request, its reasons in writing for a determination under subparagraph (b).

3. For purposes of establishing equivalence, each exporting Party shall, on the request of an importing Party, take such reasonable measures as may be available to it to facilitate access in its territory for inspection, testing and other relevant procedures.

4. Each Party should, in the development of a sanitary or phytosanitary measure, consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties.

Article 715. Risk Assessment and Appropriate Level of Protection

1. In conducting a risk assessment, each Party shall take into account:

a) relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;

b) relevant scientific evidence;

c) relevant processes and production methods;

d) relevant inspection, sampling and testing methods;

e) the prevalence of relevant diseases or pests, including the existence of pest- free or disease-free areas or areas of low pest or disease prevalence;

f) relevant ecological and other environmental conditions; and

g) relevant treatments, such as quarantines.

2. Further to paragraph 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing the risk, also take into account the following economic factors, where relevant:

a) loss of production or sales that may result from the pest or disease;

b) costs of control or eradication of the pest or disease in its territory; and

c) the relative cost-effectiveness of alternative approaches to limiting risks.

3. Each Party, in establishing its appropriate level of protection:

a) should take into account the objective of minimizing negative trade effects; and

b) shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.

4. Notwithstanding paragraphs (1) through (3) and Article 712(3)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including from international or North American standardizing organizations and from sanitary or phytosanitary measures of other Parties. The Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its

assessment, review and, where appropriate, revise the provisional measure in the light of the assessment.

5. Where a Party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, on the request of another Party and in accordance with this Section, allow for such a phased application, or grant specified exceptions for limited periods from the measure, taking into account the requesting Party's export interests.

Article 716. Adaptation to Regional Conditions

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such a measure is produced and the area in its territory to which the good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between those areas. In assessing such characteristics of an area, including whether an area is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, each Party shall take into account, among other factors:

a) the prevalence of relevant pests or diseases in that area;

b) the existence of eradication or control programs in that area; and

c) any relevant international standard, guideline or recommendation.

2. Further to paragraph 1, each Party shall, in determining whether an area is a pest-free or disease-free area or an area of low pest or disease prevalence, base its determination on factors such as geography, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in that area.

3. Each importing Party shall recognize that an area in the territory of the exporting Party is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, where the exporting Party provides to the importing Party scientific evidence or other information sufficient to so demonstrate to the satisfaction of the importing Party. For this purpose, each exporting Party shall provide reasonable access in its territory to the importing Party for inspection, testing and other relevant procedures.

4. Each Party may, in accordance with this Section:

a) adopt, maintain or apply a different risk assessment procedure for a pest-free or disease-free area than for an area of low pest or disease prevalence, or

b) make a different final determination for the disposition of a good produced in a pest-free or disease-free area than for a good produced in an area of low pest or disease prevalence, taking into account any relevant conditions, including those relating to transportation and handling.

5. Each Party shall, in adopting, maintaining or applying a sanitary or phytosanitary measure relating to the introduction, establishment or spread of an animal or plant pest or disease, accord a good produced in a pest-free or disease-free area in the territory of another Party no less favorable treatment than it accords a good produced in a pest-free or disease-free area, in another country, that poses the same level of risk. The Party shall use equivalent risk assessment techniques to evaluate relevant conditions and controls in the pest-free or disease- free area and in the area surrounding that area and take into account any relevant conditions, including those relating to transportation and handling.

6. Each importing Party shall pursue an agreement with an exporting Party, on request, on specific requirements the fulfillment of which allows a good produced in an area of low pest or disease prevalence in the territory of an exporting Party to be imported into the territory of the importing Party and achieves the importing Party's appropriate level of protection.

Article 717. Control, Inspection and Approval Procedures

1. Each Party, with respect to any control or inspection procedure that it conducts:

a) shall initiate and complete the procedure as expeditiously as possible and in no less favorable manner for a good of another Party than for a like good of the Party or of any other country;

b) shall publish the normal processing period for the procedure or communicate the anticipated processing period to the applicant on request;

c) shall ensure that the competent body

(i) on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with the procedure if the applicant so requests, and

(iv) informs the applicant, on request, of the status of the application and the reasons for any delay;

d) shall limit the information the applicant is required to supply to that necessary for conducting the procedure;

e) shall accord confidential or proprietary information arising from, or supplied in connection with, the procedure conducted for a good of another Party

(i) treatment no less favorable than for a good of the Party, and

(ii) in any event, treatment that protects the applicant's legitimate commercial interests, to the extent provided under the Party's law;

f) shall limit any requirement regarding individual specimens or samples of a good to that which is reasonable and necessary;

g) should not impose a fee for conducting the procedure that is higher for a good of another Party than is equitable in relation to any such fee it imposes for its like goods or for like goods of any other country, taking into account communication, transportation and other related costs;

h) should use criteria for selecting the location of facilities at which the procedure is conducted that do not cause unnecessary inconvenience to an applicant or its agent;

i) shall provide a mechanism to review complaints concerning the operation of the procedure and to take corrective action when a complaint is justified;

j) should use criteria for selecting samples of goods that do not cause unnecessary inconvenience to an applicant or its agent; and

k) shall limit the procedure, for a good modified subsequent to a determination that the good fulfills the requirements of the applicable sanitary or phytosanitary measure, to that necessary to determine that the good continues to fulfill the requirements of that measure.

2. Each Party shall apply, with such modifications as may be necessary, paragraphs 1(a) through (i) to its approval procedures.

3. Where an importing Party's sanitary or phytosanitary measure requires the conduct of a control or inspection procedure at the level of production, an exporting Party shall, on the request of the importing Party, take such reasonable measures as may be available to it to facilitate access in its territory and to provide assistance necessary to facilitate the conduct of the importing Party's control or inspection procedure.

4. A Party maintaining an approval procedure may require its approval for the use of an additive, or its establishment of a tolerance for a contaminant, in a food, beverage or feedstuff, under that procedure prior to granting access to its domestic market for a food, beverage or feedstuff containing that additive or contaminant. Where such Party so requires, it shall consider using a relevant international standard, guideline or recommendation as the basis for granting access until it completes the procedure.

Article 718. Notification, Publication and Provision of Information

1. Further to Articles 1802 (Publication) and 1803 (Notification and Provision of Information), each Party proposing to adopt or modify a sanitary or phytosanitary measure of general application at the federal level shall:

(a) at least 60 days prior to the adoption or modification of the measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure and provide to the other Parties and publish the full text of the proposed measure, in such a manner as to enable interested persons to become acquainted with the proposed measure;

(b) identify in the notice and notification the good to which the measure would apply, and provide a brief description of the objective and reasons for the measure;

(c) provide a copy of the proposed measure to any Party or interested person that so requests and, wherever possible, identify any provision that deviates in substance from relevant international standards, guidelines or recommendations; and

(d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.

2. Each Party shall seek, through appropriate measures, to ensure, with respect to a sanitary or phytosanitary measure of a state or provincial government:

(a) that, at an early appropriate stage, a notice and notification of the type referred to in paragraphs 1(a) and (b) are made prior to their adoption; and

(b) observance of paragraphs 1(c) and (d).

3. Where a Party considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection, it may omit any step set out in paragraph 1 or 2, provided that, on adoption of a sanitary or phytosanitary measure, it shall:

(a) immediately provide to the other Parties a notification of the type referred to in paragraph 1(b), including a brief description of the urgent problem;

(b) provide a copy of the measure to any Party or interested person that so requests; and

(c) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.

4. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 3, allow a reasonable period between the publication of a sanitary or phytosanitary measure of general application and the date that it becomes effective to allow time for interested persons to adapt to the measure.

5. Each Party shall designate a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for this purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

6. Where an importing Party denies entry into its territory of a good of another Party because it does not comply with a sanitary or phytosanitary measure, the importing Party shall provide a written explanation to the exporting Party, on request, that identifies the applicable measure and the reasons that the good is not in compliance.

Article 719. Inquiry Points

1. Each Party shall ensure that there is one inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons, and to provide relevant documents, regarding:

(a) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure, proposed, adopted or maintained in its territory at the federal, state or provincial government level;

(b) the Party's risk assessment procedures and factors it considers in conducting the assessment and in establishing its appropriate levels of protection;

(c) the membership and participation of the Party, or its relevant federal, state or provincial government authorities in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements within the scope of this Section, and the provisions of those systems and arrangements; and

(d) the location of notices published pursuant to this Section or where such information can be obtained.

2. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Section, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 720. Technical Cooperation

1. Each Party shall, on the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance that Party's sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants for the acquisition of technical expertise, training and equipment that will facilitate the Party's adjustment to and compliance with a Party's sanitary or phytosanitary measure.

2. Each Party shall, on the request of another Party:

(a) provide to that Party information on its technical cooperation programs regarding sanitary or phytosanitary measures relating to specific areas of interest; and

(b) consult with the other Party during the development of, or prior to the adoption or change in the application of, any sanitary or phytosanitary measure.

Article 721. Limitations on the Provision of Information

Nothing in this Section shall be construed to require a Party to:

(a) communicate, publish texts or provide particulars or copies of documents other than in an official language of the Party; or

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

Article 722. Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Committee should facilitate:

(a) the enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;

(b) activities of the Parties pursuant to Articles 713 and 714;

(c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and

(d) consultations on specific matters relating to sanitary or phytosanitary measures.

3. The Committee:

(a) shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available scientific and technical advice and minimize duplication of effort;

(b) may draw on such experts and expert bodies as it considers appropriate;

(c) shall report annually to the Commission on the implementation of this Section;

(d) shall meet on the request of any Party and, unless the Parties otherwise agree, at least once each year; and

(e) may, as it considers appropriate, establish and determine the scope and mandate of working groups.

Article 723. Technical Consultations

1. A Party may request consultations with another Party on any matter covered by this Section.

2. Each Party should use the good offices of relevant international and North American standardizing organizations, including those referred to in Article 713(5), for advice and assistance on sanitary and phytosanitary matters within their respective mandates.

3. Where a Party requests consultations regarding the application of this Section to a Party's sanitary or phytosanitary measure, and so notifies the Committee, the Committee may facilitate the consultations, if it does not consider the matter

itself, by referring the matter for non-binding technical advice or recommendations to a working group, including an ad hoc working group, or to another forum.

4. The Committee should consider any matter referred to it under paragraph 3 as expeditiously as possible, particularly regarding perishable goods, and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

5. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 3, the consultations shall, on the agreement of the Parties involved, constitute consultations under Article 2006 (Consultations).

6. The Parties confirm that a Party asserting that a sanitary or phytosanitary measure of another Party is inconsistent with this Section shall have the burden of establishing the inconsistency.

Article 724. Definitions

For purposes of this Section:

animal includes fish and wild fauna;

appropriate level of protection means the level of protection of human, animal or plant life or health in the territory of a Party that the Party considers appropriate;

approval procedure means any registration, notification or other mandatory administrative procedure for:

(a) approving the use of an additive for a stated purpose or under stated conditions; or

(b) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage or feedstuff containing the additive or contaminant;

area means a country, part of a country or all or parts of several countries;

area of low pest or disease prevalence means an area in which a specific pest or disease occurs at low levels;

contaminant includes pesticide and veterinary drug residues and extraneous matter;

control or inspection procedure means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing or use of a good, but does not mean an approval procedure;

international standard, guideline or recommendation means a standard, guideline or recommendation:

(a) regarding food safety, adopted by the Codex Alimentarius Commission, including one regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(b) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(c) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization, or

(d) established by or developed under any other international organization agreed on by the Parties;

pest includes a weed;

pest-free or disease-free area means an area in which a specific pest or disease does not occur;

plant includes wild flora; risk assessment means an evaluation of:

(a) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(b) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff;

sanitary or phytosanitary measure means a measure that a Party adopts, maintains or applies to:

(a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease,

(b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff,

(c) protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof, or

(d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest,

including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labelling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation; and

scientific basis means a reason based on data or information derived using scientific methods.

Chapter Eight. EMERGENCY ACTION

Article 801. Bilateral Actions

1. Subject to paragraphs 2 through 4 and Annex 801.1, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:

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

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

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

(ii) the MEN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

(a) a Party shall, without delay, deliver to any Party that may be affected written notice of, and a request for consultations regarding, the institution of a proceeding that could result in emergency action against a good originating in the territory of a Party;

(b) any such action shall be initiated no later than one year after the date of institution of the proceeding;

(c) no action may be maintained

(i) for a period exceeding three years, except where the good against which the action is taken is provided for in the items in staging category C+ of the Schedule to Annex 302.2 of the Party taking the action and that Party determines that the affected industry has undertaken adjustment and requires an extension of the period of relief, in which case the period of relief may be extended for one year provided that the duty applied during the initial period of relief is substantially reduced at the beginning of the extension period, or

(ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;

(d) no action may be taken by a Party against any particular good originating in the territory of another Party more than once during the transition period; and

(e) on the termination of the action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex 302.2 for the staged elimination of the tariff, would have been in effect one year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action

(i) the rate of duty shall conform to the applicable rate set out in its Schedule to Annex 302.2, or

(ii) the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex 302.2 for the elimination of the tariff.

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the Party against whose good the action would be taken.

4. The Party taking an action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

5. This Article does not apply to emergency actions respecting goods covered by Annex 300-B (Textile and Apparel Goods).

5. This Article does not apply to emergency actions respecting goods covered by Annex 300-B (Textile and Apparel Goods).

Article 802. Global Actions

1. Each Party retains its rights and obligations under Article XTX of the GATT or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX or any such agreement shall exclude imports of a good from each other Party from the action unless:

(a) imports from a Party, considered individually, account for a substantial share of total imports; and

(b) imports from a Party, considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

(a) imports from a Party, considered individually, account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from a Party or Parties contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of each Party, and the level and change in the level of imports of each Party. In this regard, imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. A Party taking such action, from which a good from another Party or Parties is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good from the other Party or Parties in the action in the event that the competent investigating authority determines that a surge in imports of such good from the other Party or Parties undermines the effectiveness of the action.

4. A Party shall, without delay, deliver written notice to the other Parties of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.

5. No Party may impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the Party or Parties against whose good the action is proposed to be taken, as far in advance of taking the action as practicable;

and

(b) that would have the effect of reducing imports of such good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth.

6. The Party taking an action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 803. Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

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

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 803.3.

4. This Article does not apply to emergency actions taken under Annex 300-B (Textile and Apparel Goods).

Article 804. Dispute Settlement In Emergency Action Matters

No Party may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel) regarding any proposed emergency action.

Article 805. Definitions for Purposes of this Chapter:

competent investigating authority means the "competent investigating authority" of a Party as defined in Annex 805;

contribute importantly means an important cause, but not necessarily the most important cause;

critical circumstances means circumstances where delay would cause damage that would be difficult to repair;

domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party;

emergency action does not include any emergency action pursuant to a proceeding instituted prior to January 1, 1994;

good originating in the territory of a Party means an originating good, except that in determining the Party in whose territory that good originates, the relevant rules of Annex 302.2 shall apply;

serious injury means a significant overall impairment of a domestic industry;

surge means a significant increase in imports over the trend for a recent representative base period;

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

transition period means the 10-year period beginning on January 1, 1994, except where the good against which the action is taken is provided for in the items in staging category C+ of the Schedule to Annex 302.2 of the Party taking the action, in which case the transition period shall be the period of staged tariff elimination for that good.

Part Three. TECHNICAL BARRIERS TO TRADE

Chapter Nine. STANDARDS-RELATED MEASURES

Article 901. Scope and Coverage

1. This Chapter applies to standards-related measures of a Party, other than those covered by Section B of Chapter Seven (Sanitary and Phytosanitary Measures), that may, directly or indirectly, affect trade in goods or services between the Parties, and to measures of the Parties relating to such measures.

2. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies shall be governed exclusively by Chapter Ten (Government Procurement).

Article 902. Extent of Obligations

1. Article 105 (Extent of Obligations) does not apply to this Chapter.

2. Each Party shall seek, through appropriate measures, to ensure observance of Articles 904 through 908 by state or provincial governments and by non-governmental standardizing bodies in its territory.

Article 903. Affirmation of Agreement on Technical Barriers to Trade and other Agreements

Further to Article 103 (Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under the GATT Agreement on Technical Barriers to Trade and all other international agreements, including environmental and conservation agreements, to which those Parties are party.

Article 904. Basic Rights and Obligations Right to Take Standards-Related Measures

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation. Such measures include those to prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907(2).

Non-Discriminatory Treatment

3. Each Party shall, in respect of its standards-related measures, accord to goods and service providers of another Party:

(a) national treatment in accordance with Article 301 (Market Access) or Article 1202 (Cross-Border Trade in Services); and

(b) treatment no less favorable than that it accords to like goods, or in like circumstances to service providers, of any other country.

Unnecessary Obstacles

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade shall not be deemed to be created where:

(a) the demonstrable purpose of the measure is to achieve a legitimate objective; and

(b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Article 905. Use of International Standards

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate.

2. A Party's standards-related measure that conforms to an international standard shall be presumed to be consistent with Article 904(3) and (4).

3. Nothing in paragraph 1 shall be construed to prevent a Party, in pursuing its legitimate objectives, from adopting, maintaining or applying any standards-related measure that results in a higher level of protection than would be achieved if the measure were based on the relevant international standard.

Article 906. Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.

3. Further to Articles 902 and 905, a Party shall, on request of another Party, seek, through appropriate measures, to promote the compatibility of a specific standard or conformity assessment procedure that is maintained in its territory with the standards or conformity assessment procedures maintained in the territory of the other Party.

4. Each importing Party shall treat a technical regulation adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfills the importing Party's legitimate objectives.

5. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 4.

6. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of another Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good or service complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.

7. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 6, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through such means as accreditation.

Article 907. Assessment of Risk

1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk. In conducting an assessment, a Party may take into account, among other factors relating to a good or service:

(a) available scientific evidence or technical information;

(b) intended end uses;

(c) processes or production, operating, inspection, sampling or testing methods; or

(d) environmental conditions.

2. Where pursuant to Article 904(2) a Party establishes a level of protection that it considers appropriate and conducts an assessment of risk, it should avoid arbitrary or unjustifiable distinctions between similar goods or services in the level of protection it considers appropriate, where the distinctions:

(a) result in arbitrary or unjustifiable discrimination against goods or service providers of another Party;

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

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

3. Where a Party conducting an assessment of risk determines that available scientific evidence or other information is

insufficient to complete the assessment, it may adopt a provisional technical regulation on the basis of available relevant information. The Party shall, within a reasonable period after information sufficient to complete the assessment of tisk is presented to it, complete its assessment, review and, where appropriate, revise the provisional technical regulation in the light of that assessment.

Article 908. Conformity Assessment

1. The Parties shall, further to Article 906 and recognizing the existence of substantial differences in the structure, organization and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.

2. Recognizing that it should be to the mutual advantage of the Parties concerned and except as set out in Annex 908.2, each Party shall accredit, approve, license or otherwise recognize conformity assessment bodies in the territory of another Party on terms no less favorable than those accorded to conformity assessment bodies in its territory.

3. Each Party shall, with respect to its conformity assessment procedures:

(a) not adopt or maintain any such procedure that is stricter, nor apply the procedure more strictly, than necessary to give it confidence that a good or a service conforms with an applicable technical regulation or standard, taking into account the risks that non-conformity would create;

(b) initiate and complete the procedure as expeditiously as possible;

(c) in accordance with Article 904(3), undertake processing of applications in non-discriminatory order;

(d) publish the normal processing period for each such procedure or communicate the anticipated processing period to an applicant on request;

(e) ensure that the competent body

(i) on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with the procedure where the applicant so requests, and

(iv) informs the applicant, on request, of the status of the application and the reasons for any delay;

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

(g) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of the procedure for a good of another Party or for a service provided by a person of another Party

(i) the same treatment as that for a good of the Party or a service provided by a person of the Party, and

(ii) in any event, treatment that protects an applicant's legitimate commercial interests to the extent provided under the Party's law;

(h) ensure that any fee it imposes for conducting the procedure is no higher for a good of another Party or a service provider of another Party than is equitable in relation to any such fee imposed for its like goods or service providers or for like goods or service providers of any other country, taking into account communication, transportation and other related costs;

(i) ensure that the location of facilities at which a conformity assessment procedure is conducted does not cause unnecessary inconvenience to an applicant or its agent;

(j) limit the procedure, for a good or service modified subsequent to a determination that the good or service conforms to the applicable technical regulation or standard, to that necessary to determine that the good or service continues to conform to the technical regulation or standard; and

(k) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection of samples

does not cause unnecessary inconvenience to an applicant or its agent.

4. Each Party shall apply, with such modifications as may be necessary, the relevant provisions of paragraph 3 to its approval procedures.

5. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to facilitate access in its territory for conformity assessment activities.

6. Each Party shall give sympathetic consideration to a request by another Party to negotiate agreements for the mutual recognition of the results of that other Party's conformity assessment procedures.

Article 909. Notification, Publication, and Provision of Information

1. Further to Articles 1802 (Publication) and 1803 (Notification and Provision of Information), each Party proposing to adopt or modify a technical regulation shall:

(a) at least 60 days prior to the adoption or modification of the measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure in such a manner as to enable interested persons to become acquainted with the proposed measure, except that in the case of any such measure relating to perishable goods, each Party shall, to the greatest extent practicable, publish the notice and provide the notification at least 30 days prior to the adoption or modification of the measure, but no later than when notification is provided to domestic producers;

(b) identify in the notice and notification the good or service to which the measure would apply, and shall provide a brief description of the objective of, and reasons for the measure;

(c) provide a copy of the proposed measure to any Party or interested person that so requests, and shall, wherever possible, identify any provision that deviates in substance from relevant international standards; and

(d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.

2. Each Party proposing to adopt or modify a standard or any conformity assessment procedure not otherwise considered to be a technical regulation shall, where an international standard relevant to the proposed measure does not exist or such measure is not substantially the same as an international standard, and where the measure may have a significant effect on the trade of the other Parties:

(a) at an early appropriate stage, publish a notice and provide a notification of the type required in paragraph 1(a) and (b); and

(b) observe paragraph (c) and (d).

3. Each Party shall seek, through appropriate measures, to ensure, with respect to a technical regulation of a state or provincial government other than a local government:

(a) that, at an early appropriate stage, a notice and notification of the type required under paragraph 1(a) and (b) are made prior to their adoption; and

(b) observance of paragraph (c) and (d).

4. Where a Party considers it necessary to address an urgent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers, it may omit any step set out in paragraph 1 or 3, provided that on adoption of a standards- related measure it shall:

(a) immediately provide to the other Parties a notification of the type required under paragraph 1(b), including a brief description of the urgent problem;

(b) provide a copy of the measure to any Party or interested person that so requests; and

(c) without discrimination, allow other Parties and interested persons to make comments in writing, and shall, on request, discuss the comments and take the comments and the results of the discussions into account.

5. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 4, allow a reasonable period between the publication of a standards-related measure and the date that it becomes effective to allow time for interested persons to adapt to the measure.

6. Where a Party allows non-governmental persons in its territory to be present during the process of development of standards-related measures, it shall also allow non- governmental persons from the territories of the other Parties to be present.

7. Each Party shall notify the other Parties of the development of, amendment to, or change in the application of its standards-related measures no later than the time at which it notifies non-governmental persons in general or the relevant sector in its territory.

8. Each Party shall seek, through appropriate measures, to ensure the observance of paragraphs 6 and 7 by a state or provincial government, and by non-governmental standardizing bodies in its territory.

9. Each Party shall designate by January 1, 1994 a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for that purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

Article 910. Inquiry Points

1. Each Party shall ensure that there is an inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons, and to provide relevant documents regarding:

(a) any standards-related measure proposed, adopted or maintained in its territory at the federal, state or provincial government level;

(b) the membership and participation of the Party, or its relevant federal, state or provincial government authorities, in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;

(c) the location of notices published pursuant to Article 909, or where the information can be obtained;

(d) the location of the inquiry points referred to in paragraph 3; and (e) the Party's procedures for assessment of risk, and factors it considers in conducting the assessment and in establishing, pursuant to Article 904(2), the levels of protection that it considers appropriate.

2. Where a Party designates more than one inquiry point, it shall:

(a) provide to the other Parties complete and unambiguous information on the scope of responsibility of each inquiry point; and

(b) ensure that any inquiry addressed to an incorrect inquiry point is promptly conveyed to the correct inquiry point.

3. Each Party shall take such reasonable measures as may be available to it to ensure that there is at least one inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons and to provide relevant documents or information as to where they can be obtained regarding:

(a) any standard or conformity assessment procedure proposed, adopted or maintained by non-governmental standardizing bodies in its territory; and

(b) the membership and participation of relevant non-governmental bodies in its territory in international and regional standardizing bodies and conformity assessment systems.

4. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Chapter, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 911. Technical Cooperation

1. Each Party shall, on request of another Party:

(a) provide to that Party technical advice, information and assistance on mutually agreed terms and conditions to enhance that Party's standards-related measures, and related activities, processes and systems;

(b) provide to that Party information on its technical cooperation programs regarding standards-related measures relating to specific areas of interest; and

(c) consult with that Party during the development of, or prior to the adoption or change in the application of, any standards-related measure.

2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territories of the other Parties in their participation, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

Article 912. Limitations on the Provision of Information

Nothing in this Chapter shall be construed to require a Party to:

(a) communicate, publish texts, or provide particulars or copies of documents other than in an official language of the Party; or

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

Article 913. Committee on Standards-Related Measures

1. The Parties hereby establish a Committee on Standards-Related Measures, comprising representatives of each Party.

2. The Committee's functions shall include:

(a) monitoring the implementation and administration of this Chapter, including the progress of the subcommittees and working groups established under paragraph 4, and the operation of the inquiry points established under Article 910;

(b) facilitating the process by which the Parties make compatible their standards- related measures;

(b) facilitating the process by which the Parties make compatible their standards- related measures;

(c) providing a forum for the Parties to consult on issues relating to standards- related measures, including the provision of technical advice and recommendations under Article 914;

(d) enhancing cooperation on the development, application and enforcement of standards-related measures; and

(e) considering non-governmental, regional and multilateral developments regarding standards-related measures, including under the GATT.

3. The Committee shall:

(a) meet on request of any Party and, unless the Parties otherwise agree, at least once each year; and

(b) report annually to the Commission on the implementation of this Chapter.

4. The Committee may, as it considers appropriate, establish and determine the scope and mandate of subcommittees or working groups, comprising representatives of each Party. Each subcommittee or working group may:

(a) as it considers necessary or desirable, include or consult with

(i) representatives of non-governmental bodies, including standardizing bodies, Gi) scientists, and

(ii) technical experts; and

(b) determine its work program, taking into account relevant international activities.

5. Further to paragraph 4, the Committee shall establish:

(a) the following subcommittees

(i) Land Transportation Standards Subcommittee, in accordance with Annex 913.5.a-1,

(ii) Telecommunications Standards Subcommittee, in accordance with Annex 913.5.a-2,

(iii) Automotive Standards Council, in accordance with Annex 913.5.a-3, and

(iv) Subcommittee on Labelling of Textile and Apparel Goods, in accordance with Annex 913.5.a-4; and

(b) such other subcommittees or working groups as it considers appropriate to address any topic, including:

(i) identification and nomenclature for goods subject to standards- related measures,

(ii) quality and identity standards and technical regulations,

(iii) packaging, labelling and presentation of consumer information, including languages, measurement systems, ingredients, sizes, terminology, symbols and related matters,

(iv) product approval and post-market surveillance programs,

(v) principles for the accreditation and recognition of conformity assessment bodies, procedures and systems,

(vi) development and implementation of a uniform chemical hazard classification and communication system,

(vii) enforcement programs, including training and inspections by regulatory, analytical and enforcement personnel,

(viii) promotion and implementation of good laboratory practices,

(ix) promotion and implementation of good manufacturing practices,

(x) criteria for assessment of potential environmental hazards of goods,

(xi) methodologies for assessment of risk,

(xii) guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals and biologicals,

(xiii) methods by which consumer protection, including matters relating to consumer redress, can be facilitated, and

(xiv) extension of the application of this Chapter to other services.

6. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to provide for the participation in the activities of the Committee, where and as appropriate, of representatives of state or provincial governments.

7. A Party requesting technical advice, information or assistance pursuant to Article 911 shall notify the Committee which shall facilitate any such request.

Article 914. Technical Consultations

1. Where a Party requests consultations regarding the application of this Chapter to a standards-related measure, and so notifies the Committee, the Committee may facilitate the consultations, if it does not consider the matter itself, by referring the matter for non-binding technical advice or recommendations to a subcommittee or working group, including an ad hoc subcommittee or working group, or to another forum.

2. The Committee should consider any matter referred to it under paragraph 1 as expeditiously as possible and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

3. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 1, the consultations shall, on the agreement of the Parties involved, constitute consultations under Article 2006 (Consultations).

4. The Parties confirm that a Party asserting that a standards-related measure of another Party is inconsistent with this Chapter shall have the burden of establishing the inconsistency.

Article 915. Definitions

1. For purposes of this Chapter:

approval procedure means any registration, notification or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed or used for a stated purpose or under stated conditions;

assessment of risk means evaluation of the potential for adverse effects;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a technical regulation

or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such a purpose, but does not mean an approval procedure;

international standard means a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing body means a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), Codex Alimentarius Commission, the World Health Organization (WHO), the Food and Agriculture Organization (FAQ), the International Telecommunication Union (ITU); or any other body that the Parties designate;

land transportation service means a transportation service provided by means of motor carrier or rail;

legitimate objective includes an objective such as:

(a) safety,

(b) protection of human, animal or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(c) sustainable development,

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification but does not include the protection of domestic production;

make compatible means bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent or have the effect of permitting goods or services to be used in place of one another or fulfill the same purpose;

services means land transportation services and telecommunications services;

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

standardizing body means a body having recognized activities in standardization;

standards-related measure means a standard, technical regulation or conformity assessment procedure;

technical regulation means a document which lays down goods characteristics or their related processes and production methods, or services characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method; and

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally.

2. Except as they are otherwise defined in this Agreement, other terms in this Chapter shall be interpreted in accordance with their ordinary meaning in context and in the light of the objectives of this Agreement, and where appropriate by reference to the terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities.

Part Four. GOVERNMENT PROCUREMENT

Chapter Ten. GOVERNMENT PROCUREMENT

Section A. Scope and Coverage and National Treatment

Article 1001. Scope and Coverage

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

(a) by a federal government entity set out in Annex 1001.1a-1, a government enterprise set out in Annex 1001.1a-2, or a state or provincial government entity set out in Annex 1001.1a-3 in accordance with Article 1024;

(b) of goods in accordance with Annex 1001.1b-1, services in accordance with Annex 1001.1b-2, or construction services in accordance with Annex 1001.1b-3; and

(c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold, calculated and adjusted according to the U.S. inflation rate as set out in Annex 1001.1c, of

(i) for federal government entities, US$50,000 for contracts for goods, services or any combination thereof, and US$6.5 million for contracts for construction services,

(ii) for government enterprises, US$250,000 for contracts for goods, services or any combination thereof, and US$8.0 million for contracts for construction services, and

(iii) for state and provincial government entities, the applicable threshold, as set out in Annex 1001.1a-3 in accordance with Article 1024.

2. Paragraph 1 is subject to:

(a) the transitional provisions set out in Annex 1001.2a;

(b) the General Notes set out in Annex 1001.2b; and

(c) Annex 1001.2c, for the Parties specified therein.

3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.

5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy. Procurement does not include:

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

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

Article 1002. Valuation of Contracts

1. Each Party shall ensure that its entities, in determining whether a contract is covered by this Chapter, apply paragraphs 2 through 7 in calculating the value of that contract.

2. The value of a contract shall be estimated as at the time of publication of a notice in accordance with Article 1010.

3. In calculating the value of a contract, an entity shall take into account all forms of remuneration, including premiums, fees, commissions and interest.

4. Further to Article 1001(4), an entity may not select a valuation method, or divide procurement requirements into separate contracts, to avoid the obligations of this Chapter.

5. Where an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

(a) the actual value of similar recurring contracts concluded over the prior fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or

(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

6. Tn the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:

(a) in the case of a fixed-term contract, where the term is 12 months or less, the total contract value, for its duration or, where the term exceeds 12 months, the total contract value, including the estimated residual value; or

(b) in the case of a contract for an indefinite period, the estimated monthly installment multiplied by 48.

If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set out in subparagraph (b).

7. Where tender documentation requires option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, including all possible optional purchases.

Article 1003. National Treatment and Non-Discrimination

1. With respect to measures covered by this Chapter, each Party shall accord to goods of another Party, to the suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment that the Party accords to:

(a) its own goods and suppliers; and

(b) goods and suppliers of another Party.

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

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

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

3. Paragraph 1 does not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges or other import regulations, including restrictions and formalities.

Article 1004. Rules of Origin

No Party may apply rules of origin to goods imported from another Party for purposes of government procurement covered by this Chapter that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade, which may be the Marking Rules established under Annex 311 if they become the rules of origin applied by that Party in the normal course of its trade.

Article 1005. Denial of Benefits

1. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non- Party and that has no substantial business activities in the territory of any Party.

2. A Party may deny to an enterprise of another Party the benefits of this Chapter if nationals of a non-Party own or control the enterprise and:

(a) the circumstance set out in Article 1113(1)(a) (Denial of Benefits) is met; or

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

Article 1006. Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

Article 1007. Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade.

2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:

(a) specified in terms of performance criteria rather than design or descriptive characteristics; and

(b) based on international standards, national technical regulations, recognized national standards, or building codes.

3. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

4. Each Party shall ensure that its entities do 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.

Section B. Tendering Procedures

Article 1008. Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are:

(a) applied in a non-discriminatory manner; and

(b) consistent with this Article and Articles 1009 through 1016.

2. Tn this regard, each Party shall ensure that its entities:

(a) do not provide to any supplier information with regard to a specific procurement in a manner that would have the effect of precluding competition; and

(b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

Article 1009. Qualification of Suppliers

1. Further to Article 1003, no entity of a Party may, in the process of qualifying suppliers in a tendering procedure, discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.

2. The qualification procedures followed by an entity shall be consistent with the following:

(a) conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;

(b) conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfillment of the contract in question;

(c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the procuring entity;

(d) an entity shall not misuse the process of, including the time required for, qualification in order to exclude suppliers of another Party from a suppliers' list or from being considered for a particular procurement;

(e) an entity shall recognize as qualified suppliers those suppliers of another Party that meet the conditions for participation in a particular procurement;

(f) an entity shall consider for a particular procurement those suppliers of another Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;

(g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of the list or of their removal from it;

(h) where, after publication of a notice in accordance with Article 1010, a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start the qualification procedure;

(i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and

(j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, on request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:

(a) ensure that each of its entities uses a single qualification procedure, except that an entity may use additional qualification procedures where the entity determines the need for a different procedure and is prepared, on request of another Party, to demonstrate that need; and

(b) endeavor to minimize differences in the qualification procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier on grounds such as bankruptcy or false declarations.

Article 1010. Invitation to Participate

1. Except as otherwise provided in Article 1016, an entity shall publish an invitation to participate for all procurements in accordance with paragraphs 2, 3 and 5, in the appropriate publication referred to in Annex 1010.1.

2. The invitation to participate shall take the form of a notice of proposed procurement that shall contain the following information:

(a) a description of the nature and quantity of the goods or services to be procured, including any options for further procurement and, if possible,

(i) an estimate of when such options may be exercised, and

(ii) in the case of recurring contracts, an estimate of when the subsequent notices will be issued;

(b) a statement as to whether the procedure is open or selective and whether it will involve negotiation;

3. Notwithstanding paragraph 2, an entity listed in Annex 1001.1a-2 or 1001.1a-3 may use as an invitation to participate a notice of planned procurement that shall contain as much of the information referred to in paragraph 2 as is available to the entity, but that shall include, at a minimum, the following information:

(a) a description of the subject matter of the procurement;

(b) the time limits set for the receipt of tenders or applications to be invited to tender;

(c) the address to which requests for documents relating to the procurement should be submitted;

(d) a statement that interested suppliers should express their interest in the procurement to the entity; and

(e) the identification of a contact point within the entity from which further information may be obtained.

4. An entity that uses a notice of planned procurement as an invitation to participate shall subsequently invite suppliers that have expressed an interest in the procurement to confirm their interest on the basis of information provided by the entity, which shall include at least the information referred to in paragraph 2.

5. Notwithstanding paragraph 2, an entity listed in Annex 1001.1a-2 or 1001.1a-3 may use as an invitation to participate a notice regarding a qualification system. An entity that uses such a notice shall, subject to the considerations referred to Article 1015(8), provide in a timely manner information that allows all suppliers that have expressed an interest in participating in the procurement to have a meaningful opportunity to assess their interest. The information shall normally

include the information required for notices referred to in paragraph 2. Information provided to any interested supplier shall be provided in a non- discriminatory manner to all other interested suppliers.

6. In the case of selective tendering procedures, an entity that maintains a permanent list of qualified suppliers shall publish annually in the appropriate publication referred to in Annex 1010.1 a notice containing the following information:

(a) an enumeration of any such lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;

(b) the conditions to be fulfilled by suppliers in view of their inscription on the lists and the methods according to which each of those conditions will be verified by the entity concerned; and

(c) the period of validity of the lists and the formalities for their renewal.

7. Where, after publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, an entity finds that it has become necessary to amend or reissue the notice or tender documentation, the entity shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by an entity to a supplier with respect to a particular procurement shall be given simultaneously to all other interested suppliers and sufficiently in advance so as to provide all suppliers concerned adequate time to consider the information and to respond.

8. An entity shall indicate in the notices referred to in this Article that the procurement is covered by this Chapter.

Article 1011. Selective Tendering Procedures

1. To ensure optimum effective competition between the suppliers of the Parties under selective tendering procedures, an entity shall, for each procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Parties, consistent with the efficient operation of the procurement system.

2. Subject to paragraph 3, an entity that maintains a permanent list of qualified suppliers may select suppliers to be invited to tender for a particular procurement from among those listed. In the process of making a selection, the entity shall provide for equitable opportunities for suppliers on the list.

3. Subject to Article 1009(2)(f, an entity shall allow a supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. Where an entity does not invite or admit a supplier to tender, the entity shall, on request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

Article 1012. Time Limits for Tendering and Delivery

1. An entity shall:

(a) in prescribing a time limit, provide adequate time to allow suppliers of another Party to prepare and submit tenders before the closing of the tendering procedures;

(b) in determining a time limit, consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the time normally required for transmitting tenders by mail from foreign as well as domestic points; and

(c) take due account of publication delays when setting the final date for receipt of tenders or applications to be invited to tender.

2. Subject to paragraph 3, an entity shall provide that:

(a) in open tendering procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of a notice in accordance with Article 1010;

(b) in selective tendering procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender is no less than 25 days from the date of publication of a notice in accordance with Article 1010, and the period for receipt of tenders is no less than 40 days from the date of issuance of the invitation to tender; and

(c) in selective tendering procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders is no less than 40 days from the date of the initial issuance of invitations to tender, but where the date of initial issuance of invitations to tender does not coincide with the date of publication of a notice in accordance with Article 1010, there shall not be less than 40 days between those two dates.

3. An entity may reduce the periods referred to in paragraph 2 in accordance with the following:

(a) where a notice referred to Article 1010(3) or (5) has been published for a period of no less than 40 days and no more than 12 months, the 40-day limit for receipt of tenders may be reduced to no less than 24 days;

(b) in the case of the second or subsequent publications dealing with recurring contracts within the meaning of Article 1010(2)(a), the 40-day limit for receipt of tenders may be reduced to no less than 24 days;

(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods may be reduced to no less than 10 days from the date of publication of a notice in accordance with Article 1010; or

(d) where an entity listed in Annex 1001.la-2 or 1001.la- 3 is using as an invitation to participate a notice referred to in Article 1010(5), the periods may be fixed by mutual agreement between the entity and all selected suppliers but, in the absence of agreement, the entity may fix periods that shall be sufficiently long to allow for responsive bidding and in any event shall be no less than 10 days.

4. An entity shall, in establishing a delivery date for goods or services and consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the time realistically required for production, destocking and transport of goods from the points of supply.

Article 1013. Tender Documentation

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders, including information required to be published in the notice referred to in Article 1010(2), except for the information required under Article 1010(2)(h). The documentation shall also include:

(a) the address of the entity to which tenders should be submitted;

(b) the address to which requests for supplementary information should be submitted;

(c) the language or languages in which tenders and tendering documents may be submitted;

(d) the closing date and time for receipt of tenders and the length of time during which tenders should be open for acceptance;

(e) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;

(f) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;

(g) a complete description of the goods or services to be procured and any other requirements, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;

(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transportation, insurance and inspection costs, and in the case of goods or services of another Party, customs duties and other import charges, taxes and the currency of payment;

(i) the terms of payment; and

(j) any other terms or conditions.

2. An entity shall:

(a) forward tender documentation on the request of a supplier that is participating in open tendering procedures or has requested to participate in selective tendering procedures, and reply promptly to any reasonable request for explanations relating thereto; and

(b) reply promptly to any reasonable request for relevant information made by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the

procedure for the award of the contract.

Article 1014. Negotiation Disciplines

1. An entity may conduct negotiations only:

(a) in the context of procurement in which the entity has, in a notice published in accordance with Article 1010, indicated its intent to negotiate; or

(b) where it appears to the entity from the evaluation of the tenders that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation.

2. An entity shall use negotiations primarily to identify the strengths and weaknesses in the tenders.

3. An entity shall treat all tenders in confidence. In particular, no entity may provide to any person information intended to assist any supplier to bring its tender up to the level of any other tender.

4. No entity may, in the course of negotiations, discriminate between suppliers. In particular, an entity shall:

(a) carry out any elimination of suppliers in accordance with the criteria set out in the notices and tender documentation;

(b) provide in writing all modifications to the criteria or technical requirements to all suppliers remaining in the negotiations;

(c) permit all remaining suppliers to submit new or amended tenders on the basis of the modified criteria or requirements; and

(d) when negotiations are concluded, permit all remaining suppliers to submit final tenders in accordance with a common deadline.

Article 1015. Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. An entity shall use procedures for the submission, receipt and opening of tenders and the awarding of contracts that are consistent with the following:

(a) tenders shall normally be submitted in writing directly or by mail;

(b) where tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms and conditions of the invitation to tender;

(c) a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;

(d) the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submission of tenders;

(e) tenders presented by telephone shall not be permitted;

(f) requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and

(g) the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be administered in a manner that would result in discrimination between suppliers.

In this paragraph, "means of electronic transmission" consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

2. No entity may penalize a supplier whose tender is received in the office designated in the tender documentation after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the entity. An entity may also consider, in exceptional circumstances, tenders received after the time specified for receiving tenders if the entity's procedures so provide.

3. All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders. The entity shall retain the information on

the opening of tenders. The information shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

4. An entity shall award contracts in accordance with the following:

(a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation;

(b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;

(c) unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest-priced tender or the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation;

(d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation; and

(e) option clauses shall not be used in a manner that circumvents this Chapter.

5. No entity of a Party may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

6. An entity shall:

(a) on request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and

(b) on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier.

7. No later than 72 days after the award of a contract, an entity shall publish a notice in the appropriate publication referred to in Annex 1010.1 that shall contain the following information:

(a) a description of the nature and quantity of goods or services included in the contract;

(b) the name and address of the entity awarding the contract;

(c) the date of the award;

(d) the name and address of each winning supplier;

(e) the value of the contract, or the highest-priced and lowest-priced tenders considered in the process of awarding the contract; and

(f) the tendering procedure used.

8. Notwithstanding paragraphs 1 through 7, an entity may withhold certain information on the award of a contract where disclosure of the information:

(a) would impede law enforcement or otherwise be contrary to the public interest;

(b) would prejudice the legitimate commercial interest of a particular person; or

(c) might prejudice fair competition between suppliers.

Article 1016. Limited Tendering Procedures

1. An entity of a Party may, in the circumstances and subject to the conditions set out in paragraph 2, use limited tendering procedures and thus derogate from Articles 1008 through 1015, provided that such limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers.

2. An entity may use limited tendering procedures in the following circumstances and subject to the following conditions, as applicable:

(a) in the absence of tenders in response to an open or selective call for tenders, or where the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where the tenders submitted come from suppliers that do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;

(e) where an 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. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be subject to Articles 1008 through 1015. Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs;

(f) for goods purchased on a commodity market;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;

(h) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is

(i) organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest,

(ii) organized with a view to awarding the design contract to the winner, and

(iii) to be judged by an independent jury; and

(i) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.

3. An entity shall prepare a report in writing on each contract awarded by it under paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and conditions described in paragraph 2 that justified the use of limited tendering. The entity shall retain each report. They shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Section C. Bid Challenge

Article 1017. Bid Challenge

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain bid challenge procedures for procurement covered by this Chapter in accordance with the following:

(a) each Party shall allow suppliers to submit bid challenges concerning any aspect of the procurement process, which for

the purposes of this Article begins after an entity has decided on its procurement requirement and continues through the contract award;

(b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;

(c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;

(d) whether or not a supplier has attempted to resolve its complaint with the entity, or following an unsuccessful attempt at such a resolution, no Party may prevent the supplier from initiating a bid challenge or seeking any other relief;

(e) a Party may require a supplier to notify the entity on initiation of a bid challenge;

(f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;

(h) on receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge;

(i) a Party may require its reviewing authority to limit its considerations to the challenge itself;

(j) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where the delay would be contrary to the public interest;

(k) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to re-evaluate offers, terminate or re-compete the contract in question;

(l) entities normally shall follow the recommendations of the reviewing authority;

(m) each Party should authorize its reviewing authority, following the conclusion of a bid challenge procedure, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with this Chapter;

(n) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and interested persons;

(o) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and

(p) each Party shall ensure that each of its entities maintains complete documentation regarding each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with this Chapter.

2. A Party may require that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10- working day period described in paragraph 1(f) shall begin no earlier than the date that the notice is published or the tender documentation is made available.

Section D. General Provisions

Article 1018. Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

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

Article 1019. Provision of Information

1. Further to Article 1802(1) (Publication), each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure, including standard contract clauses, regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex 1010.1.

2. Each Party shall:

(a) on request, explain to another Party its government procurement procedures;

(b) ensure that its entities, on request from a supplier, promptly explain their procurement practices and procedures; and

(c) designate by January 1, 1994 one or more contact points to

(i) facilitate communication between the Parties, and

(ii) answer all reasonable inquiries from other Parties to provide relevant information on matters covered by this Chapter.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party except after consultation with and agreement of the Party that provided the information.

4. On request, each Party shall provide to another Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to that Party.

6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. With a view to ensuring effective monitoring of procurement covered by this Chapter, each Party shall collect statistics and provide to the other Parties an annual report in accordance with the following reporting requirements, unless the Parties otherwise agree:

(a) statistics on the estimated value of all contracts awarded, both above and below the applicable threshold values, broken down by entities;

(b) statistics on the number and total value of contracts above the applicable threshold values, broken down by entities, by categories of goods and services established in accordance with classification systems developed under this Chapter and by the country of origin of the goods and services procured;

(c) statistics on the number and total value of contracts awarded under each use of the procedures referred to in Article 1016, broken down by entities, by categories of goods and services, and by country of origin of the goods and services procured; and

(d) Statistics on the number and total value of contracts awarded under derogations to this Chapter set out in Annexes 1001.2a and 1001.2b, broken down by entities.

8. Each Party may organize by state or province any portion of a report referred to in paragraph 7 that pertains to entities listed in Annex 1001.1a-3.

Article 1020. Technical Cooperation

1. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for the suppliers of all Parties.

2. Each Party shall provide to the other Parties and to the suppliers of such Parties, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system, and access on a non-discriminatory basis to any program it conducts.

3. The training and orientation programs referred to in paragraph 2 include: (a) training of government personnel directly involved in government procurement procedures; (b) training of suppliers interested in pursuing government procurement opportunities; (c) an explanation and description of specific elements of each Party's government procurement system, such as its bid challenge mechanism; and (d) information about government procurement market opportunities.

4. Each Party shall establish by January 1, 1994 at least one contact point to provide information on the training and orientation programs referred to in this Article.

Article 1021. Joint Programs for Small Business

1. The Parties shall establish, within 12 months after the date of entry into force of this Agreement, the Committee on Small Business, comprising representatives of the Parties. The Committee shall meet as mutually agreed, but not less than once each year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their small businesses.

2. The Committee shall work to facilitate the following activities of the Parties:

(a) identification of available opportunities for the training of small business personnel in government procurement procedures;

(b) identification of small businesses interested in becoming trading partners of small businesses in the territory of another Party;

(c) development of data bases of small businesses in the territory of each Party for use by entities of another Party wishing to procure from small businesses;

(d) consultations regarding the factors that each Party uses in establishing its criteria for eligibility for any small business programs; and

(e) activities to address any related matter.

Article 1022. Rectifications or Modifications

1. A Party may modify its coverage under this Chapter only in exceptional circumstances.

2. Where a Party modifies its coverage under this Chapter, the Party shall:

(a) notify the other Parties and its Section of the Secretariat of the modification;

(b) reflect the change in the appropriate Annex; and

(c) propose to the other Parties appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to its Schedules to Annexes 1001.1a-1 through 1001.1b-3 and Annexes 1001.2a and 1001.2b, provided that it notifies such rectifications to the other Parties and its Section of the Secretariat, and another Party does not object to such proposed rectification within 30 days. In such cases, compensation need not be proposed.

4. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its government procurement entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In such cases, compensation need not be proposed. No Party may undertake such reorganizations or programs to avoid the obligations of this Chapter.

5. Where a Party considers that:

(a) an adjustment proposed under paragraph (2)(c) is not adequate to maintain a comparable level of mutually agreed coverage, or

(b) a rectification or a minor amendment under paragraph 3 or a reorganization under paragraph 4 does not meet the applicable requirements of those paragraphs and should require compensation,

the Party may have recourse to dispute settlement procedures under Chapter Twenty Cnstitutional Arrangements and Dispute Settlement Procedures).

Article 1023. Divestiture of Entities

1. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity covered by this Chapter.

2. If, on the public offering of shares of an entity listed in Annex 1001.1a-2, or through other methods, the entity is no longer subject to federal government control, the Party may delete the entity from its Schedule to that Annex, and withdraw the entity from the coverage of this Chapter, on notification to the other Parties and its Section of the Secretariat.

3. Where a Party objects to the withdrawal on the grounds that the entity remains subject to federal government control, that Party may have recourse to dispute settlement procedures under Chapter Twenty (institutional Arrangements and Dispute Settlement Procedures).

Article 1024. Further Negotiations

1. The Parties shall commence further negotiations no later than December 31, 1998, with a view to the further liberalization of their respective government procurement markets.

2. In such negotiations, the Parties shall review all aspects of their government procurement practices for purposes of:

(a) assessing the functioning of their government procurement systems;

(b) seeking to expand the coverage of this Chapter, including by adding

(i) other government enterprises, and

(ii) procurement otherwise subject to legislated or administrative exceptions; and

(c) reviewing thresholds.

3. Prior to such review, the Parties shall endeavor to consult with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises.

4. If the negotiations pursuant to Article IX:6(b) of the GATT Agreement on Government Procurement ("the Code") are completed prior to such review, the Parties shall:

(a) immediately begin consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises; and

(b) increase the obligations and coverage of this Chapter to a level at least commensurate with that of the Code.

5. The Parties shall undertake further negotiations, to commence no later than one year after the date of entry into force of this Agreement, on the subject of electronic transmission.

Article 1025. Definitions

1. For purposes of this Chapter:

construction services contract means a contract for the realization by any means of civil or building works listed in Appendix 1001.1b-3-A;

entity means an entity listed in Annex 1001.1a-1, 1001.1a-2 or 1001.1a-3;

goods of another Party means goods originating in the territory of another Party, determined in accordance with Article

1004;

international standard means "international standard", as defined in Article 915 (Definitions - Standards-Related Measures);

limited tendering procedures means procedures where an entity contacts suppliers individually, only in the circumstances and under the conditions specified in Article 1016;

locally established supplier includes a natural person resident in the territory of the Party, an enterprise organized or established under the Party's law, and a branch or representative office located in the Party's territory;

open tendering procedures means those procedures under which all interested suppliers may submit a tender;

selective tendering procedures means procedures under which, consistent with Article 1011(3), those suppliers invited to do so by an entity may submit a tender;

services includes construction services contracts, unless otherwise specified; standard means "standard", as defined in Article 915;

supplier means a person that has provided or could provide goods or services in response to an entity's call for tender;

technical regulation means "technical regulation", as defined in Article 915;

technical specification means a specification which lays down goods characteristics or their related processes and production methods, or services characteristics or their related operating methods, including the applicable administrative provisions. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method; and

tendering procedures means open tendering procedures, selective tendering procedures and limited tendering procedures.

Part Five. INVESTMENT, SERVICES AND RELATED MATTERS

Chapter Eleven. INVESTMENT

Section A. Investment

Article 1101. Scope and Coverage

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

(a) investors of another Party;

(b) investments of investors of another Party in the territory of the Party; and

(c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.

2. A Party has the right to perform exclusively the economic activities set out in Annex II and to refuse to permit the establishment of investment in such activities.

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

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1102. National Treatment

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

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in

like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103. Most-Favored-Nation Treatment

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

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

Article 1104. Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105. Minimum Standard of Treatment

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

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1106. Performance Requirements

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

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

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

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

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

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

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition

authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.

3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

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

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

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

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

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

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) necessary for the conservation of living or non-living exhaustible natural resources.

Article 1107. Senior Management and Boards of Directors

1 No Party may require that an enterprise of that Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.

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

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 1110; and

(e) payments arising under Section B.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of another Party.

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

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

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 1110. Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

Article 1111. Special Formalities and Information Requirements

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and

investments of investors of another Party pursuant to this Chapter.

2. Notwithstanding Articles 1102 or 1103, a Party may require an investor of another Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 1112. Relation to other Chapters

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

2. A requirement by a Party that a service provider of another Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that crossborder service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 1113. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors 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 that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 1114. Environmental Measures

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

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

Section B. Settlement of Disputes between a Party and an Investor of Another Party

Article 1115. Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 1116. Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 1117. Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non- controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 1118. Settlement of a Claim Through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119. Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

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

Article 1120. Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 1121. Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

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

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

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

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 1120.1(b) shall not apply.

Article 1122. Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

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

(b) Article II of the New York Convention for an agreement in writing; and (c) Article I of the InterAmerican Convention for an agreement.

Article 1123. Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 1126, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

Article 1124. Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a Tribunal, other than a Tribunal established under Article 1126, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary- General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of

the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 45 presiding arbitrators meeting the qualifications of the Convention and rules referred to in Article 1120 and experienced in international law and investment matters. The roster members shall be appointed by consensus and without regard to nationality.

Article 1125. Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 1124(3) or on a ground other than nationality:

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

(b) a disputing investor referred to in Article 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 111701) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 1126. Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 1120 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

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

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

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall deliver to the disputing Party or disputing investors against which the order is sought a copy of the request.

5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 1124(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. The Secretary- General shall appoint the two other members from the roster referred to in Article 1124(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of a Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 1116 or 1117 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 1120 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 1120 be stayed, unless the latter Tribunal has already adjourned its proceedings.

10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

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

(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:

(a) within 15 days of receipt of the request, in the case of a request made by a disputing investor;

(b) within 15 days of making the request, in the case of a request made by the disputing Party.

12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within 15 days of receipt of the request.

13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.

Article 1127. Notice a Disputing Party Shall Deliver to the other Parties:

(a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and

(b) copies of all pleadings filed in the arbitration.

Article 1128. Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 1129. Documents

1 A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party a copy of:

(a) the evidence that has been tendered to the Tribunal; and

(b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 1130. Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 1131. Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 1132. Interpretation of Annexes

1 Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to Article 1131(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 1133. Expert Reports

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

Article 1134. Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.

Article 1135. Final Award

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

(a) monetary damages and any applicable interest;

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

A tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is made under Article 1117(1):

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

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

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

3. A Tribunal may not order a Party to pay punitive damages.

Article 1136. Finality and Enforcement of an Award

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

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

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

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

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

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

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 2008 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

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

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the InterAmerican Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the InterAmerican Convention.

Article 1137. General

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 1137.2.

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. Annex 1137.4 applies to the Parties specified in that Annex with respect to publication of an award.

Article 1138. Exclusions

1 Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) to other actions taken by a Party pursuant to Article 2102 (National Security), a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an

investor of another Party, or its investment, pursuant to that Article shall not be subject to such provisions.

2. The dispute settlement provisions of this Section and of Chapter Twenty shall not apply to the matters referred to in Annex 1138.2.

Section C. Definitions

Article 1139. Definitions

For purposes of this Chapter:

disputing investor means an investor that makes a claim under Section B;

disputing parties means the disputing investor and the disputing Party; disputing party means the disputing investor or the disputing Party;

disputing Party means a Party against which a claim is made under Section B;

enterprise means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

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

equity or debt securities includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

G7 Currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States;

ICSID means the International Centre for Settlement of Investment Disputes;

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

InterAmerican Convention means the InterAmerican Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

investment means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

investor of a non-Party means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;

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

Secretary-General means the Secretary-General of ICSID; transfers means transfers and international payments; Tribunal means an arbitration tribunal established under Article 1120 or 1126; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

Annex 1120.1. Submission of a Claim to Arbitration

Mexico

With respect to the submission of a claim to arbitration:

(a) an investor of another Party may not allege that Mexico has breached an obligation under:

(i) Section A or Article 1503(2) (State Enterprises), or

(ii) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, both in an arbitration under this Section and in proceedings before a Mexican court or administrative tribunal; and

(b) where an enterprise of Mexico that is a juridical person that an investor of another Party owns or controls directly or indirectly alleges in proceedings before a Mexican court or administrative tribunal that Mexico has breached an obligation under:

(i) Section A or Article 1503(2) (State Enterprises), or

Mexico

Where Mexico is the disputing Party, the applicable arbitration rules apply to the publication of an award.

United States

Where the United States is the disputing Party, either the United States or a disputing investor that is a party to the

arbitration may make an award public.

Annex 1138.2. Exclusions from Dispute Settlement

Canada

A decision by Canada following a review under the Investment Canada Act, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Mexico

A decision by the National Commission on Foreign Investment ("Comisión Nacional de Inversiones Extranjeras") following a review pursuant to Annex I, page IM4, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Chapter Twelve. CROSS-BORDER TRADE IN SERVICES

Article 1201. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross- border trade in services by service providers of another Party, including measures respecting:

(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 and transportation systems in connection with the provision of a service;

(d) the presence in its territory of a service provider of another Party; and

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

2. This Chapter does not apply to:

(a) financial services, as defined in Chapter Fourteen (Financial Services);

(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 by a Party or a state enterprise; or

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

3. Nothing in this Chapter shall be construed to:

(a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or

(b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1202. National Treatment

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to service providers of the Party of which it forms a part.

Article 1203. Most-Favored-Nation Treatment

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

Article 1204. Standard of Treatment

Each Party shall accord to service providers of any other Party the better of the treatment required by Articles 1202 and 1203.

Article 1205. Local Presence

No Party may require a service provider of another 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 provision of a service.

Article 1206. Reservations

1. Articles 1202, 1203 and 1205 do not apply to:

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

(i) a Party at the federal level, as set out in its Schedule to Annex I,

(ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or

(iii) a local 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 1202, 1203 and 1205.

2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or province, not including a local government.

3. Articles 1202, 1203 and 1205 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex I.

Article 1207. Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains at the federal level.

2. Within one year of the date of entry into force of this Agreement, each Party shall set out in its Schedule to Annex V any quantitative restriction maintained by a state or province, not including a local government.

3. Each Party shall notify the other Parties of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex V.

4. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex V pursuant to paragraphs 1 through 3.

Article 1208. Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex VI its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 1209. Procedures

The Commission shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule

(i) state or provincial measures in accordance with Article 1206(2),

(ii) quantitative restrictions in accordance with Article 1207(2) and (3),

(iii) commitments pursuant to Article 1208, and

(iv) amendments of measures referred to in Article 1206(1)(c); and

(b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 1210. Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

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

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

(c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in the territory of another Party or of a non-Party:

(a) nothing in Article 1203 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the territory of another Party; and

(b) the Party shall afford another Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of another Party. Where a Party does not comply with this obligation with respect to a particular sector, any other Party may, in the same sector and for such period as the noncomplying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex I or reinstating:

(a) any such requirement at the federal level that it eliminated pursuant to this Article; or

(b) on notification to the non-complying Party, any such requirement at the state or provincial level existing on the date of entry into force of this Agreement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.

5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 1211. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:

(a) the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and

(i) the denying Party does not maintain diplomatic relations with the non-Party, or

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

(b) the cross-border provision of a transportation service covered by this Chapter is provided using equipment not registered by any Party.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non- Party and that has no substantial business activities in the territory of any Party.

Article 1212. Sectoral Annex

Annex 1212 applies to specific sectors.

Article 1213. Definitions

1. For purposes of this Chapter, a reference to a federal, state or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.

2. For purposes of this Chapter:

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

(a) from the territory of a Party into the territory of another Party,

(b) in the territory of a Party by a person of that Party to a person of another Party, or

(c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 1139 (investment Definitions), in that territory;

enterprise means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

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

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by tradespersons or vessel and aircraft crew members;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

(a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

Chapter Thirteen. TELECOMMUNICATIONS

Article 1301. Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public

telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

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

(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or

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

Article 1302. Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:

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

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;

(c) perform switching, signalling and processing functions; and (d) use operating protocols of their choice.

3. Each Party shall ensure that:

(a) the pricing of public telecommunications transport services reflects economic costs directly related to providing the services; and

(b) private leased circuits are available on a flat-rate pricing basis.

Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

4. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

5. Further to Article 2101 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

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

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:

(a) a restriction on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

8. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

Article 1303. Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. No Party may require a person providing enhanced or value-added services to:

(a) provide those services to the public generally;

(b) cost-justify its rates;

(c) file a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

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

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly to which Article 1305 applies.

Article 1304. Standards-Related Measures

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction; or

(e) ensure users' safety and access to public telecommunications transport networks or services.

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

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. No Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to Article 904(3) (Non-Discriminatory Treatment), each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non- discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

7. The Telecommunications Standards Subcommittee established under Article 913(5) (Committee on Standards-Related Measures) shall perform the functions set out in Annex 913.5.a2.

Article 1305. Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures, such as:

(a) accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 1306. Transparency

Further to Article 1802 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

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

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration or licensing requirements. Article 1307: Relation to Other Chapters

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

Article 1308. Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 1309. Technical Cooperation and other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Article 1310. Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means "conformity assessment procedure" as defined in Article 915 (Standards-Related Measures-Definitions), and includes the procedures referred to in Annex 1310;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

flat-rate pricing basis means pricing on the basis of a fixed charge per period of time regardless of the amount of use;

intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party, or

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

but does not include telecommunications services provided to persons other than those described herein;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private network means a telecommunications transport network that is used exclusively for intracorporate communications;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end

change in the form or content of the customer's information;

standards-related measure means a "standards-related measure" as defined in Article 915;

telecommunications means the transmission and reception of signals by any electromagnetic means; and

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Chapter Fourteen. FINANCIAL SERVICES

Article 1401. Scope and Coverage

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

(a) financial institutions of another Party;

(b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Articles 1109 through 1111, 1113, 1114 and 1211 are hereby incorporated into and made a part of this Chapter. Articles 1115 through 1138 are hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 1109 through 1111, 1113 and 1114, as incorporated into this Chapter.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1401.4 applies to the Parties specified in that Annex.

Article 1402. Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a selfregulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such selfregulatory organization.

Article 1403. Establishment of Financial Institutions

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.

2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:

(a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;

(b) expand geographically in that Party's territory; and

(c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.

3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.

4, Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:

(a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or

(b) impose terms and conditions on establishment that are consistent with Article 1405.

5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party.

Article 1404. Cross-Border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of another Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Party's Schedule to Annex VII.

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

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 providers of another Party and of financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.

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 providers of another Party and of financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.

Article 1405. National Treatment

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

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

3. Subject to Article 1404, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of another Party treatment no less favorable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of such service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a measure of any state or province:

(a) in the case of an investor of another Party with an investment in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in a state or province, treatment no less favorable than the treatment accorded to an investor of the Party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in that state or province, in like circumstances; and

(b) in any other case, treatment no less favorable than the most favorable treatment accorded to an investor of the Party in a financial institution, its financial institution or its investment in a financial institution, in like circumstances.

For greater certainty, in the case of an investor of another Party with investments in financial institutions or financial institutions of such investor, located in more than one state or province, the treatment required under subparagraph (a) means:

(c) treatment of the investor that is no less favorable than the most favorable treatment accorded to an investor of the Party with an investment located in such states, or provinces in like circumstances; and

(d) with respect to an investment of the investor in a financial institution or a financial institution of such investor, located in a state or province, treatment no less favorable than that accorded to an investment of an investor of the Party, or a financial institution of such investor, located in that state or province, in like circumstances.

5. A Party's treatment of financial institutions and cross-border financial service providers of another Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

6. A Party's treatment affords equal competitive opportunities if it does not disadvantage financial institutions and cross-border financial services providers of another Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and financial services providers to provide such services, in like circumstances.

7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

Article 1406. Most-Favored-Nation Treatment

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

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

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

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

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another 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 another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 1407. New Financial Services and Data Processing

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.

Article 1408. Senior Management and Boards of Directors

1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 1409. Reservations and Specific Commitments

1. Articles 1403 through 1408 do not apply to:

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

(i) a Party at the federal level, as set out in Section A of its Schedule to Annex VII,

(ii) a state or province, for the period ending on the date specified in Annex 1409.1 for that state or province, and thereafter as described by the Party in Section A of its Schedule to Annex VII in accordance with Annex 1409.1, or

(iii) a local 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 1403 through 1408.

2. Articles 1403 through 1408 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VII.

3. Section C of each Party's Schedule to Annex VII sets out certain specific commitments by that Party.

4. Where a Party has set out a reservation to Article 1102, 1103, 1202 or 1203 in its Schedule to Annex I, II, II or IV, the reservation shall be deemed to constitute a reservation to Article 1405 or 1406, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.

Article 1410. Exceptions

1. Nothing in this Part shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) the protection of investors, depositors, financial market participants, policyholders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and

(c) ensuring the integrity and stability of a Party's financial system.

2. Nothing in this Part applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 1106 (Investment Performance Requirements) with respect to measures covered by Chapter Eleven (nvestment) or Article 1109 (nvestments Transfers).

3. Article 1405 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 1401(3)(a).

4, Notwithstanding Article 1109(1), (2) and (3), as incorporated into this Chapter, and without limiting the applicability of Article 1109(4), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial services provider to, or for the benefit of, an affiliate of or person related to such institution or provider, 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 providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

Article 1411. Transparency

1. In lieu of Article 1802(2) (Publication), each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of official publication;

(b) in other written form; or

(c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party's regulatory authorities shall make available to interested persons their requirements for completing applications relating to the provision of financial services.

3. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4, A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of another Party relating to the provision 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.

5. Nothing in this Chapter requires a Party to furnish or allow access to:

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

6. Each Party shall maintain or establish one or more inquiry points no later than 180 days after the date of entry into force of this Agreement, to respond in writing as soon as practicable, to all reasonable inquiries from interested persons regarding measures of general application covered by this Chapter.

Article 1412. Financial Services Committee

1 The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1412.1.

2. Subject to Article 2001(2)(d) (Free Trade Commission), the Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 1415,

3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.

Article 1413. Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 1412.1.

3. A Party may request that regulatory authorities of another Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service providers in the requesting Party's territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in another Party's territory or a cross-border financial service provider in another Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Annex 1413.6 shall apply to further consultations and arrangements.

Article 1414. Dispute Settlement

1. Section B of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish by January 1, 1994 and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years, and may be reappointed.

3. Financial services roster members 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 2009(2)(b) and (c) (Roster).

4. Where a Party claims that a dispute arises under this Chapter, Article 2011 (Panel Selection) shall apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 2010(1) (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 1410, the chair of the panel shall meet the qualifications set out in paragraph 3.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 1415. Investment Disputes In Financial Services

1. Where an investor of another Party submits a claim under Article 1116 or 1117 to arbitration under Section B of Chapter Eleven (Investment Settlement of Disputes between a Party and an Investor of Another Party) against a Party and the disputing Party invokes Article 1410, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1410 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 1414. Further to Article 2017 (Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article 1416. Definitions

For purposes of this Chapter:

cross-border financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide or provides financial services through the cross-border provision of such services;

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

(a) from the territory of a Party into the territory of another Party,

(b) in the territory of a Party by a person of that Party to a person of another Party, or

(c) by a national of a Party in the territory of another Party, but does not include the provision of a service in the territory of a Party by an investment in that territory;

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

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

financial service means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party;

investment means "investment" as defined in Article 1139 (investment Definitions), except that, with respect to "loans" and "debt securities" referred to in that Article:

(a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

(c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and

(d) a loan granted by or debt security owned by a cross-border financial service provider, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article 1139;

investor of a Party means a Party or state enterprise thereof, or a person of that Party, that seeks to make, makes, or has made an investment;

new financial service means a financial service not provided in the Party's territory that is provided within the territory of another 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 Chapter Two (General 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 providers or financial institutions.

Annex 1412.1. Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

(a) for Canada, the Department of Finance of Canada;

(b) for Mexico, the Secretaria de Hacienda y Crédito Puiblico; and

(c) for the United States, the Department of the Treasury for banking and other financial services and the Department of Commerce for insurance services.

Chapter Fifteen. COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Article 1501. Competition Law

1. Each Party shall adopt or maintain measures to proscribe anticompetitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.

3. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

Article 1502. Monopolies and State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of another Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 2004 (Nullification and Impairment).

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately owned monopoly that it designates and any government monopoly that it maintains or designates:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;

(c) provides non-discriminatory treatment to investments of investors, to goods and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non- monopolized market in its territory that adversely affect an investment of an investor of another Party, including through the discriminatory provision of the monopoly good or service, crosssubsidization or predatory conduct.

5. For purposes of this Article "maintain" means designate prior to the date of entry into force of this Agreement and existing on January 1, 1994.

Article 1503. State Enterprises

1 Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapters Eleven (nvestment) and Fourteen (Financial Services) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of another Party.

Article 1504. Working Group on Trade and Competition

The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years of the date of entry into force of this Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

Article 1505. Definitions

For purposes of this Chapter: designate means to establish, designate or authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

discriminatory provision includes treating:

(a) a parent, a subsidiary or other enterprise with common ownership more favorably than an unaffiliated enterprise, or

(b) one class of enterprises more favorably than another, in like circumstances;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the federal government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

non-discriminatory treatment means the better of national treatment and most favored nation treatment, as set out in the relevant provisions of this Agreement; and

state enterprise means, except as set out in Annex 1505, an enterprise owned, or controlled through ownership interests, by a Party.

Annex 1505. Country-Specific Definitions of State Enterprises

For purposes of Article 1503(3), "state enterprise":

(a) with respect to Canada, means a Crown corporation within the meaning of the Financial Administration Act (Canada), a Crown corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law; and

(b) with respect to Mexico, does not include, the Compafifa Nacional de Subsistencias Populares (National Company for Basic Commodities) and its existing affiliates, or any successor enterprise or its affiliates, for purposes of sales of maize, beans and powdered milk.

Chapter Sixteen. TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 1601. General Principles

Further to Article 102 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 1602. General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article 1603. Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1603.

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

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

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

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 1604. Provision of Information

1. Further to Article 1802 (Publication), each Party shall:

(a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Parties to become acquainted with them.

2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 1605. Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.

2. The Working Group shall meet at least once each year to consider:

(a) the implementation and administration of this Chapter;

(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 1603; and

(d) proposed modifications of or additions to this Chapter.

Article 1606. Dispute Settlement

1. A Party may not initiate proceedings under Article 2007 (Commission Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 1607. Relation to other Chapters

Except for this Chapter, Chapters One (Objectives), Two (General Definitions), Twenty Cnstitutional Arrangements and Dispute Settlement Procedures) and TwentyTwo (Final Provisions) and Articles 1801 (Contacts Points), 1802 (Publication), 1803 (Notification and Provision of Information) and 1804 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Article 1608. Definitions

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities;

citizen means "citizen" as defined in Annex 1608 for the Parties specified in that Annex;

existing means "existing" as defined in Annex 1608 for the Parties specified in that Annex; and

temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

Annex 1603. Temporary Entry for Business Persons

Section A. Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 1603.A.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. No Party may:

(a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult, on request, with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section B. Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought, or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. No Party may:

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

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry.

Section C. Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party may:

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

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section D. Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Appendix 1603.D.1, if the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party; and

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Appendix 1603.D.4, regarding temporary entry of business persons of another Party seeking to engage in business activities at a professional level in a profession set out in Appendix 1603.D.1, if the Parties concerned have not agreed otherwise prior to the date of entry into force of this Agreement for those Parties. In establishing such a limit, the Party shall consult with the other Party concerned.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties concerned agree otherwise:

(a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Appendix 1603.D.4 by an amount to be established in consultation with the other Party concerned, taking into account the demand for temporary entry under this Section;

(b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require the business person to comply with its other procedures applicable to the temporary entry of professionals; and

(c) may, in consultation with the other Party concerned, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by those Parties.

6. Nothing in paragraph 4 or 5 shall be construed to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party concerned with a view to determining a date after which the limit shall cease to apply.

Part Six. INTELLECTUAL PROPERTY

Chapter Seventeen. INTELLECTUAL PROPERTY

Article 1701. Nature and Scope of Obligations

1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property

tights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:

(a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);

(b) the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);

(c) the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and

(d) the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).

If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.

3. Annex 1701.3 applies to the Parties specified in that Annex.

Article 1702. More Extensive Protection

A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 1703. National Treatment

1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.

2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:

(a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 1704. Control of Abusive or Anticompetitive Practices or Conditions

Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 1705. Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and

(b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:

(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;

(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(c) the communication of a work to the public; and (d) the commercial rental of the original or a copy of a computer program.

Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and

(b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

7. Annex 1705.7 applies to the Parties specified in that Annex.

Article 1706. Sound Recordings

1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:

(a) the direct or indirect reproduction of the sound recording;

(b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization;

(c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and

(d) the commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works fixed therein.

Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

2. Each Party shall provide a term of protection for sound recordings of at least 50 years from the end of the calendar year in which the fixation was made.

3. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the sound recording and do not unreasonably prejudice the legitimate interests of the right holder.

Article 1707. Protection of Encrypted Program-Carrying Satellite Signals

Within one year from the date of entry into force of this Agreement, each Party shall make it:

(a) a criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that 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 civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).

Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.

Article 1708. Trademarks

1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible.

2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

4. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) examination of applications;

(b) notice to be given to an applicant of the reasons for the refusal to register a trademark;

(c) a reasonable opportunity for the applicant to respond to the notice;

(d) publication of each trademark either before or promptly after it is registered; and

(e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.

A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

6. Article 6bis of the Paris Convention shall apply, with such modifications as may be necessary, to services. In determining whether a trademark is wellknown, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.

8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least two years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non- use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

10. No Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.

9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

10. No Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.

11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.

12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.

13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.

14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.

Article 1709. Patents

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

3. A Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than microorganisms; and

(c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.

Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:

(a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine, and

(b) as of July 1, 1991, for any other subject matter,

that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:

(a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and

(b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.

8. A Party may revoke a patent only when:

(a) grounds exist that would have justified a refusal to grant the patent; or

(b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.

9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.

10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the Party's domestic market;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;

(k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such

authorization are likely to recur;

(l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:

(a) the product obtained by the patented process is new; or

(b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

12, Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

Article 1710. Layout Designs of Semiconductor Integrated Circuits

1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on May 26, 1989.

2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:

(a) a protected layout design;

(b) an integrated circuit in which a protected layout design is incorporated; or

(c) an article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.

3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design, or any article that incorporates such an integrated circuit, where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.

5. No Party may permit the compulsory licensing of layout designs of integrated circuits.

6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of:

(a) filing of the application for registration; or

(b) the first commercial exploitation of the layout design, wherever in the world it occurs.

7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.

8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.

9. Annex 1710.9 applies to the Parties specified in that Annex.

Article 1711. Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:

(a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;

(b) the information has actual or potential commercial value because it is secret; and

(c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

Article 1712. Geographical Indications

1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good;

(b) any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.

3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality. 4. Nothing in this Article shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:

(a) for at least 10 years, or

(b) in good faith, before the date of signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, either:

(a) before the date of application of these provisions in that Party, or

(b) before the geographical indication is protected in its Party of origin,

no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.

7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.

9. Nothing in this Chapter shall be construed to require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.

Article 1713. Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:

(a) designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and

(b) such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.

3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making or selling articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of other persons.

5. Each Party shall provide a term of protection for industrial designs of at least 10 years.

Article 1714. Enforcement of Intellectual Property Rights: General Provisions

1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.

2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable timelimits or unwarranted delays.

3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:

(a) preferably be in writing and preferably state the reasons on which the decisions are based;

(b) be made available at least to the parties in a proceeding without undue delay; and

(c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.

4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.

5. Nothing in this Article or Articles 1715 through 1718 shall be construed to require a Party to establish a judicial system for the enforcement of intellectual property rights distinct from that Party's system for the enforcement of laws in general.

6. For the purposes of Articles 1715 through 1718, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 1715. Specific Procedural and Remedial Aspects of Civil and Administrative Procedures

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right provided in this Chapter. Each Party shall provide that:

(a) defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;

(b) parties in a proceeding are allowed to be represented by independent legal counsel;

(c) the procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;

(d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and

(e) the procedures include a means to identify and protect confidential information.

2. Each Party shall provide that its judicial authorities shall have the authority:

(a) where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;

(b) where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and_final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;

(c) to order a party in a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, which order shall be enforceable at least immediately after customs clearance of such goods;

(d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;

(e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and

(f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to

provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in subparagraph 2(c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.

4. With respect to the authority referred to in subparagraph 2(d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.

5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:

In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

6. Tn respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.

7. Notwithstanding the other provisions of Articles 1714 through 1718, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.

8. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1716. Provisional Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and

(b) to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:

(a) the applicant is the right holder;

(b) the applicant's right is being infringed or such infringement is imminent; and

(c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall provide that its judicial authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis:

(a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;

(b) a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

(a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or

(b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1717. Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.

3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

Article 1718. Enforcement of Intellectual Property Rights at the Border

2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.

3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

Article 1718. Enforcement of Intellectual Property Rights at the Border

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence:

(a) to satisfy that Party's competent authorities that, under the domestic laws of the country of importation, there is prima facie an infringement of its intellectual property right; and

(b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.

The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

4. Each Party shall provide that, where pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority, and the period provided for in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

5. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.

6. Each Party shall provide that its customs administration shall release goods from suspension if within a period not exceeding 10 working days after the applicant under paragraph 1 has been served notice of the suspension the customs administration has not been informed that:

(a) a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or

(b) a competent authority has taken provisional measures prolonging the suspension,

provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.

7. Each Party shall provide that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 1716(6) shall apply.

9. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.

10. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate the right holder's claims. Each Party shall also provide that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the 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.

11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and

where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in paragraphs 6 through 8; and

(c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 1715(5). In regard to counterfeit goods, the authorities shall not allow the re exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.

14. Annex 1718.14 applies to the Parties specified in that Annex.

Article 1719. Cooperation and Technical Assistance

1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include the training of personnel.

2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties by January 1, 1994 of contact points in its federal government and shall exchange information concerning trade in infringing goods.

Article 1720. Protection of Existing Subject Matter

1. Except as required under Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.

2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question and that is protected in a Party on such date, or that meets or subsequently meets the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.

3. Except as required under Article 1705(7), and notwithstanding the first sentence of paragraph 2, no Party may be required to restore protection to subject matter that, on the date of application of the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.

4. In respect of any acts relating to specific objects embodying protected subject matter that become infringing under the terms of laws in conformity with this Agreement, and that were begun or in respect of which a significant investment was made, before the date of entry into force of this Agreement for that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.

5. No Party shall be obliged to apply Article 1705(2)(d) or 1706(1)(d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.

6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.

7. In the case of intellectual property rights for which protection is conditional on registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under this Agreement. Such amendments shall not include new matter.

Article 1721. Definitions

1. For purposes of this Chapter:

confidential information includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law.

2. For purposes of this Agreement:

encrypted program-carrying satellite signal means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception, by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;

geographical indication means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

in a manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

intellectual property rights refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breedersâ rights, rights in geographical indications and industrial design rights;

nationals of another Party means, in respect of the relevant intellectual property tight, persons who would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Geneva Convention (1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1 (CountrySpecific Definitions);

public includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)Gi) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

secondary uses of sound recordings means the use directly for broadcasting or for any other public communication of a sound recording.

Part Seven. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Chapter Eighteen. PUBLICATION, NOTIFICATION AND ADMINISTRATION OF LAWS

Article 1801. Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 1802. Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable

interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

Article 1803. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 1804. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 1802 to particular persons, goods or services of another Party in specific cases that:

(a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 1805. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 1806. Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Chapter Nineteen. REVIEW AND DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY MATTERS

Article 1901. General Provisions

1. Article 1904 applies only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.

2. For purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.

3. Except for Article 2203 (Entry into Force), no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

Article 1902. Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.

2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:

(a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to goods from that Party or from the Parties to this Agreement;

(b) the amending Party notifies in writing the Parties to which the amendment applies of the amending statute as far in advance as possible of the date of enactment of such statute;

(c) following notification, the amending Party, on request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and

(d) such amendment, as applicable to that other Party, is not inconsistent with

(i) the General Agreement on Tariffs and Trade (GATT), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Code) or the Agreement on the Interpretation and Application of Articles VI, XVI and XXILI of the General Agreement on Tariffs and Trade (the Subsidies Code), or any successor agreement to which all the original signatories to this Agreement are party, or

(ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade between the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives, and the practices of the Parties.

Article 1903. Review of Statutory Amendments

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

(a) the amendment does not conform to the provisions of Article 1902(2)(d)(i) or (ii); or

(b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of Article 1902(2)(d)G) or (ii).

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 1903.2.

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

(a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;

(b) if corrective legislation is not enacted within nine months from the end of the 90day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may

(i) take comparable legislative or equivalent executive action, or

(ii) terminate this Agreement with regard to the amending Party on 60 day written notice to that Party.

Article 1904. Review of Final Antidumping and Countervailing Duty Determinations

1. As provided in this Article, each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. An involved Party may request that a panel review, based on the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into and made a part of this Agreement.

3. The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

4. A request for a panel shall be made in writing to the other involved Party within 30 days following the date of publication of the final determination in question in the official journal of the importing Party. In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.

5. An involved Party on its own initiative may request review of a final determination by a panel and shall, on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review.

6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both involved Parties request a panel to review a final determination, a single panel shall review that determination.

7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.

9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

(a) the judicial review procedures of any Party, or

(b) cases appealed under those procedures, with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set out in this Article. No Party may provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. This Article shall not apply where:

(a) neither involved Party seeks panel review of a final determination;

(b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or

(c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.

13. Where, within a reasonable time after the panel decision is issued, an involved Party alleges that: (a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

(ii) the panel seriously departed from a fundamental rule of procedure, or

(iii) the panel manifestly exceeded its powers, authority or jurisdiction set out in this Article, for example by failing to apply the appropriate standard of review, and

(b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process, that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.

14. To implement the provisions of this Article, the Parties shall adopt rules of procedure by January 1, 1994. Such rules shall be based, where appropriate, on judicial rules of appellate procedure, and shall include rules concerning: the content and service of requests for panels; a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding; the protection of business proprietary, government classified, and other privileged information (including sanctions against persons participating before panels for improper release of such information); participation by private persons; limitations on panel review to errors alleged by the Parties or private persons; filing and service; computation and extensions of time; the form and content of briefs and other papers; pre and posthearing conferences; motions; oral argument; requests for rehearing; and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:

(a) 30 days for the filing of the complaint;

(b) 30 days for designation or certification of the administrative record and its filing with the panel;

(c) 60 days for the complainant to file its brief,

(d) 60 days for the respondent to file its brief;

(e) 15 days for the filing of reply briefs;

(f) 15 to 30 days for the panel to convene and hear oral argument; and

(g) 90 days for the panel to issue its written decision.

15. In order to achieve the objectives of this Article, the Parties shall amend their antidumping and countervailing duty statutes and regulations with respect to antidumping or countervailing duty proceedings involving goods of the other Parties, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws. In particular, without limiting the generality of the foregoing, each Party shall:

(a) amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;

(b) amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person

within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;

(a) amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;

(b) amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;

(c) amend its statutes or regulations to ensure that

(i) domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and

(ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and

(d) make the further amendments set out in its Schedule to Annex 1904.15.

Article 1905. Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law:

(a) has prevented the establishment of a panel requested by the complaining Party;

(b) has prevented a panel requested by the complaining Party from rendering a final decision;

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the competent investigating authority's determination and whether the competent investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911, the Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations, or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.

3. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request and perform its functions in a manner consistent with this Chapter.

4. The roster for special committees shall be that established under Annex 1904.13.

4. The roster for special committees shall be that established under Annex 1904.13.

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.

6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.6.

7. Where the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, the complaining Party and the Party complained against shall begin consultations within 10 days thereafter and shall seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.

8. If, within the 60day period, the Parties are unable to reach a mutually satisfactory solution to the matter, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or

problems with respect to which the committee has made an affirmative finding, the complaining Party may suspend:

(a) the operation of Article 1904 with respect to the Party complained against; or

(b) the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

If the complaining Party decides to take action under this paragraph, it shall do so within 30 days after the end of the 60day consultation period.

9. In the event that a complaining Party suspends the operation of Article 1904 with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 1904 within 30 days after the suspension of the operation of Article 1904 by the complaining Party. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.

10. At the request of the Party complained against, the special committee shall reconvene to determine whether:

(a) the suspension of benefits by the complaining Party pursuant to paragraph 8(b) is manifestly excessive; or

(b) the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

The special committee shall, within 45 days of the request, present a report to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension effected by the complaining Party or the Party complained against, or both, pursuant to paragraph 8 or 9 shall be terminated.

11. If the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, then effective as of the day following the date of issuance of the special committee's report:

(a) binational panel or extraordinary challenge committee review under Article 1904 shall be stayed

(i) in the case of review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1, and in no case more than 150 days prior to an affirmative finding by the special committee, or

(ii) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party; and

(b) the time set out in Article 1904(4) or Annex 1904.13 for requesting panel or committee review shall not run unless and until resumed in accordance with paragraph 12.

12. If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), the panel or committee review stayed under paragraph 11(a) shall be terminated and the challenge to the final determination shall be irrevocably referred to the appropriate domestic court for decision, as provided below:

(a) in the case of review of any final determination of the complaining Party requested by the Party complained against, at the request of either Party, or of a party to the panel review under Article 1904; or

(b) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party, or of a person of the complaining Party that is a party to the panel review under Article 1904.

If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), any running of time suspended under paragraph 11(b) shall resume.

If the suspension of the operation of Article 1904 does not become effective, panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

13. If the complaining Party suspends the application to the Party complained against of such benefits under the Agreement as may be appropriate under the circumstances pursuant to paragraph 8(b), panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

14. Each Party shall provide in its domestic legislation that, in the event of an affirmative finding by the special committee, the time for requesting judicial review of a final antidumping or countervailing duty determination shall not run unless and until the Parties concerned have negotiated a mutually satisfactory solution under paragraph 7, have suspended the

operation of Article 1904 or the application of other benefits under paragraph 8.

Article 1906. Prospective Application

This Chapter shall apply only prospectively to:

(a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and

(b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

Article 1907. Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.

2. The Parties further agree to consult on:

(a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and

(b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

3. The competent investigating authorities of the Parties shall consult annually, or on the request of any Party, and may submit reports to the Commission, where appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of antidumping and countervailing duty laws to:

(a) publish notice of initiation of investigations in the importing Party's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the goods at issue;

(b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;

(c) provide explicit written notice and instructions as to the information required from interested parties and reasonable time to respond to requests for information;

(d) accord reasonable access to information, noting that in this context

(i) "reasonable access" means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set out in paragraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review, and

(ii) "access to information" means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential (business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic law of a Party; any privileges arising under the domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;

(e) provide an opportunity for interested parties to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;

(f) protect confidential (business proprietary) information received by the competent investigating authority to ensure that there is no disclosure except to representatives determined by the competent investigating authority to be qualified;

(g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of ex parte meetings that may be required to be kept;

(h) provide disclosure of relevant information, including an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of the subsidy, on which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties;

(i) provide a statement of reasons concerning the final determination of dumping or subsidization; and

(j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Inclusion of an item in subparagraphs (a) through (j) is not intended to serve as guidance to a binational panel reviewing a final antidumping or countervailing duty determination pursuant to Article 1904 in determining whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party.

Article 1908. Special Secretariat Provisions

1. Each Party shall establish a division within its section of the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter, including the work of panels or committees that may be convened pursuant to this Chapter.

2. The Secretaries of the Secretariat shall act jointly to provide administrative assistance to all panels or committees established pursuant to this Chapter. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in that Party's Section office. Such Secretary shall, on request, provide to the Secretary for the Section of any other Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the Secretary for the Section of any Party that is not an involved Party.

3. Each Secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.

4. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall forward to the Secretary for the Section of the other involved Party copies of all official letters, documents or other papers received or filed with that Party's Section office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 2. The Secretary for the Section of an involved Party shall provide on request to the Secretary for the Section of a Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

Article 1909. Code of Conduct

The Parties shall, by the date of entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903, 1904 and 1905.

Article 1910. Miscellaneous

On request of another Party, the competent investigating authority of a Party shall provide to the other Party copies of all public information submitted to it for purposes of an antidumping or countervailing duty investigation with respect to goods of that other Party.

Article 1911. Definitions

For purposes of this Chapter:

administrative record means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

(a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of ex parte meetings as may be required to be kept;

(b) a copy of the final determination of the competent investigating authority, including reasons for the determination;

(c) all transcripts or records of conferences or hearings before the competent investigating authority; and

(d) all notices published in the official journal of the importing Party in connection with the administrative proceeding;

antidumping statute as referred to in Articles 1902 and 1903 means "antidumping statute" of a Party as defined in Annex 1911;

competent investigating authority means "competent investigating authority" of a Party as defined in Annex 1911;

countervailing duty statute as referred to in Articles 1902 and 1903 means "countervailing duty statute" of a Party as defined in Annex 1911;

domestic law for purposes of Article 1905(1) means a Party's constitution, statutes, regulations and judicial decisions to the extent they are relevant to the antidumping and countervailing duty laws;

final determination means "final determination" of a Party as defined in Annex 1911;

foreign interests includes exporters or producers of the Party whose goods are the subject of the proceeding or, in the case of a countervailing duty proceeding, the government of the Party whose goods are the subject of the proceeding;

general legal principles includes principles such as standing, due process, rules of statutory construction, mootness and exhaustion of administrative remedies;

goods of a Party means domestic products as these are understood in the General Agreement on Tariffs and Trade,

importing Party means the Party that issued the final determination; interested parties includes foreign interests; involved Party means:

(a) the importing Party; or

(b) a Party whose goods are the subject of the final determination;

remand means a referral back for a determination not inconsistent with the panel or committee decision; and

standard of review means the "standard of review" for each Party as defined in Annex 1911.

Chapter Twenty. INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT PROCEDURES

Section A. Institutions

Article 2011. The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee its further elaboration;

(c) resolve disputes that may arise regarding its interpretation or application;

(d) supervise the work of all committees and working groups established under this Agreement, referred to in Annex 2001.2; and

(e) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;

(b) seek the advice of non-governmental persons or groups; and (c) take such other action in the exercise of its functions as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise agree.

5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

Article 2002. The Secretariat

1 The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

(a) establish a permanent office of its Section;

(b) be responsible for

(i) the operation and costs of its Section, and

(ii) the remuneration and payment of expenses of panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex 2002.2;

(c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and

(d) notify the Commission of the location of its Section's office.

3. The Secretariat shall:

(a) provide assistance to the Commission;

(b) provide administrative assistance to

(i) panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908; and

(ii) panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and

(c) as the Commission may direct

(i) support the work of other committees and groups established under this Agreement, and

(ii) otherwise facilitate the operation of this Agreement.

Section B. Dispute Settlement

Article 2003. Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2004. Recourse to Dispute Settlement Procedures

Except for the matters covered in Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and as otherwise provided in this Agreement, the dispute settlement provisions of 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 an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.

Article 2005. GATT Dispute Settlement

1 Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its

intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

3. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article 104 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

4. In any dispute referred to in paragraph 1 that arises under Section B of Chapter Seven (Sanitary and Phytosanitary Measures) or Chapter Nine (Standards-Related Measures):

(a) concerning a measure adopted or maintained by a Party to protect its human, animal or plant life or health, or to protect its environment, and

(b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

where the responding Party requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

5. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 or 4 to the other Parties and to its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3 or 4, the responding Party shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 2007.

6. Once dispute settlement procedures have been initiated under Article 2007 or dispute settlement proceedings have been initiated under the GATT, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3 or 4.

7. For purposes of this Article, dispute settlement proceedings under the GATT are deemed to be initiated by a Party's request for a panel, such as under Article XXTIT:2 of the General Agreement on Tariffs and Trade 1947, or for a committee investigation, such as under Article 20.1 of the Customs Valuation Code.

Consultations

Article 2006. Consultations

1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.

3. Unless the Commission otherwise provides in its rules and procedures established under Article 2001(4), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to its Section of the Secretariat.

4. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) seek to avoid any resolution that adversely affects the interests under this Agreement of any other Party.

Initiation of Procedures

Article 2007. Commission - Good Offices, Conciliation and Mediation

1. If the consulting Parties fail to resolve a matter pursuant to Article 2006 within:

(a) 30 days of delivery of a request for consultations,

(b) 45 days of delivery of such request if any other Party has subsequently requested or has participated in consultations regarding the same matter,

(c) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods, or

(d) such other period as they may agree, any such Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where:

(a) it has initiated dispute settlement proceedings under the GATT regarding any matter subject to Article 2005(3) or (4), and has received a request pursuant to Article 2005(5) for recourse to dispute settlement procedures under this Chapter; or

(b) consultations have been held pursuant to Article 513 (Working Group on Rules of Origin), Article 723 (Sanitary and Phytosanitary Measures Technical Consultations) and Article 914 (Standards-Related Measures Technical Consultations).

3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Parties and to its Section of the Secretariat.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly.

5. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations, as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

6. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

Panel Proceedings

Article 2008. Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article 2007(4), and the matter has not been resolved within:

(a) 30 days thereafter,

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 2007(6), or

(c) such other period as the consulting Parties may agree,

any consulting Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.

2. On delivery of the request, the Commission shall establish an arbitral panel.

3. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and its Section of the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

4. If a third Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

(a) a dispute settlement procedure under this Agreement, or

(b) a dispute settlement proceeding in the GATT on grounds that are substantially equivalent to those available to that Party under this Agreement, regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 2009. Roster

1. The Parties shall establish by January 1, 1994 and maintain a roster of up to 30 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) comply with a code of conduct to be established by the Commission.

Article 2010. Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 2009(2).

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 2007(5).

Article 2011. Panel Selection

1. Where there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

(c) Within 15 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 2012. Rules of Procedure

1. The Commission shall establish by January 1, 1994 Model Rules of Procedure, in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and

(b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 2016(2)."

4. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

5. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 2004, the terms of reference shall so indicate.

Article 2013. Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and to its Section of the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.

Article 2014. Role of Experts

On request of a disputing 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 disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 2015. Scientific Review Boards

1. On request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing Party in a proceeding, subject to such terms and conditions as such Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the disputing Parties and the scientific bodies set out in the Model Rules of Procedure established pursuant to Article 2012(1).

3. The participating Parties shall be provided:

(a) advance notice of, and an opportunity to provide comments to the panel on, the proposed factual issues to be referred to the board; and

(b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties on the report into account in the preparation of its report.

Article 2016. Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 2014 or 2015.

2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 2012(1) may provide, present to the disputing Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 2012(5);

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for resolution of the dispute.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:

(a) request the views of any participating Party;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.

Article 2017. Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

3. The disputing Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article 2015, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

Implementation of Panel Reports

Article 2018. Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.

2. Wherever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.

Article 2019. Non-Implementation-Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 2004 and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution pursuant to Article 2018(1) within 30 days of receiving the final report, such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:

(a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 2004; and

(b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. On the written request of any disputing Party delivered to the other Parties and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.

4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.

Section C. Domestic Proceedings and Private Commercial Dispute Settlement

Article 2020. Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2021. Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.

Article 2022. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 InterAmerican Convention on International Commercial Arbitration.

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

Annex 2001.2. Committees and Working Groups

A. Committees:

1. Committee on Trade in Goods (Article 316)

2. Committee on Trade in Worn Clothing (Annex 300-B, Section 9.1)

3. Committee on Agricultural Trade (Article 706)

- Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods (Article 707)

4. Committee on Sanitary and Phytosanitary Measures (Article 722)

5. Committee on Standards-Related Measures (Article 913)

- Land Transportation Standards Subcommittee (Article 913(5))

- Telecommunications Standards Subcommittee (Article 913(5))

- Automotive Standards Council (Article 913(5))

- Subcommittee on Labelling of Textile and Apparel Goods (Article 913(5))

6. Committee on Small Business (Article 1021)

7. Financial Services Committee (Article 1412)

8. Advisory Committee on Private Commercial Disputes (Article 2022(4))

B. Working Groups:

1. Working Group on Rules of Origin (Article 513) - Customs Subgroup (Article 513(6))

2. Working Group on Agricultural Subsidies (Article 705(6))

3. Bilateral Working Group (Mexico United States) (Annex 703.2(A)(25))

4. Bilateral Working Group (Canada Mexico) (Annex 703.2(B)(13))

5. Working Group on Trade and Competition (Article 1504)

6. Temporary Entry Working Group (Article 1605)

C. Other Committees and Working Groups Established under this Agreement

Annex 2002.2. Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to the panelists, committee members and members of scientific review boards.

2. The remuneration of panelists or committee members and their assistants, members of scientific review boards, their travel and lodging expenses, and all general expenses of panels, committees or scientific review boards shall be borne equally by:

(a) in the case of panels or committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), the involved Parties, as they are defined in Article 1911; or

(b) in the case of panels and scientific review boards established under this Chapter, the disputing Parties.

3. Each panelist or committee member shall keep a record and render a final account of the person's time and expenses, and the panel, committee or scientific review board shall keep a record and render a final account of all general expenses. The Commission shall establish amounts of remuneration and expenses that will be paid to panelists and committee members.

Annex 2004. Nullification and Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Part Two (Trade in Goods), except for those provisions of Annex 300-A (Automotive Sector) or Chapter Six (Energy) relating to investment,

(b) Part Three (Technical Barriers to Trade),

(c) Chapter Twelve (Cross-Border Trade in Services), or

(d) Part Six (Intellectual Property), is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke:

(a) paragraph 1(a) or (b), to the extent that the benefit arises from any crossborder trade in services provision of Part Two, or

(b) paragraph 1(c) or (d), with respect to any measure subject to an exception under Article 2101 (General Exceptions).

Part Eight. OTHER PROVISIONS

Chapter Twenty-One. EXCEPTIONS

Article 2101. General Exceptions

1. For purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services,

(b) Part Three (Technical Barriers to Trade), to the extent that a provision of that Part applies to services,

(c) Chapter Twelve (Cross-Border Trade in Services), and

(d) Chapter Thirteen (Telecommunications),

shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection.

Article 2102. National Security

1. Subject to Articles 607 (Energy - National Security Measures) and 1018 (Government Procurement Exceptions), nothing in this Agreement shall be construed:

(a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the

maintenance of international peace and security.

Article 2103. Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 301 (Market Access - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT; and

(b) Article 314 (Market Access - Export Taxes) and Article 604 (Energy Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 1202 (Cross-Border Trade in Services - National Treatment) and Article 1405 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations, and to those taxes listed in paragraph 1 of Annex 2103.4, that relate to the purchase or consumption of particular services, and

(b) Articles 1102 and 1103 (Investment - National Treatment and Most-Favored Nation Treatment), Articles 1202 and 1203 (Cross-Border Trade in Services - National Treatment and Most-Favored Nation Treatment) and Articles 1405 and 1406 (Financial Services - National Treatment and 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 and those taxes listed in paragraph 1 of Annex 2103.4,

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 any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded under those Articles, in the sense of Annex 2004, or

(h) to the measures listed in paragraph 2 of Annex 2103.4.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 1106(3), (4) and (5) (investment - Performance Requirements) shall apply to taxation measures.

6. Article 1110 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 1116 (Claim by an Investor of a Party on its Own Behalf) or 1117 (Claim by an Investor of a Party on Behalf of an Enterprise), where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 2103.6 at the time that it gives notice under Article 1119 (Notice of Intent to Submit a Claim to Arbitration). If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 1120 (Submission of a Claim to Arbitration).

Article 2104. Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with paragraphs 2 through 4 and are:

(a) consistent with paragraph 5 to the extent they are imposed on transfers other than Cross-Border trade in financial services; or

(b) consistent with paragraphs 6 and 7 to the extent they are imposed on Cross- Border trade in financial services.

General Rules

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;

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

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

3. A measure adopted or maintained under this Article shall:

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

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

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

(d) be consistent with paragraph 2(c) and with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment or most-favored-nation treatment basis, whichever is better.

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

Restrictions on Transfers Other than Cross-Border Trade in Financial Services

5. Restrictions imposed on transfers, other than on cross border trade in financial services:

(a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;

(b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a);

(c) where imposed on transfers covered by Article 1109 (Investment - Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and

(d) may not take the form of tariff surcharges, quotas, licenses or similar measures.

Restrictions on Cross-Border Trade in Financial Services

6. A Party imposing a restriction on Cross-Border trade in financial services: (a) may not impose more than one measure on any transfer, unless consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF; and

(b) shall promptly notify and consult with the other Parties to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements

(i) the nature and extent of the balance of payments difficulties of the Party,

(ii) the external economic and trading environment of the Party, and

(iii) alternative corrective measures that may be available.

7. In consultations under paragraph 6(b), the Parties shall:

(a) consider if measures adopted under this Article comply with paragraph 3, in particular paragraph 3(c); and

(b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments situation

the Party adopting the measures.

Article 2105. 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.

Article 2106. Cultural Industries

Annex 2106 applies to the Parties specified in that Annex with respect to cultural industries.

Article 2107. Definitions

For purposes of this Chapter:

cultural industries means persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the IMF;

IMF means the International Monetary Fund;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the IMF;

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

taxes and taxation measures do not include:

(a) a "customs duty" as defined in Article 318 (Market Access Definitions); or

(b) the measures listed in exceptions (b),(c), (d) and (e) of that definition; and

transfers means international transactions and related international transfers and payments.

Annex 2103.4. Specific Taxation Measures

1. For purposes of Article 2103(4)(a) and (b), the listed tax is the asset tax under the Asset Tax Law ("Ley del Impuesto al Activo") of Mexico.

2. For purposes of Article 2103(4)(h), the listed tax is any excise tax on insurance premiums adopted by Mexico to the extent that such tax would, if levied by Canada or the United States, be covered by Article 2103(4)(d), (e) or (A).

Annex 2103.6. Competent Authorities

For purposes of this Chapter:

competent authority means

(a) in the case of Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance;

(b) in the case of Mexico, the Deputy Minister of Revenue of the Ministry of Finance and Public Credit ("Secretarfa de Hacienda y CrÃ©dito Piiblico");

(c) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury.

Annex 2106. Cultural Industries

Notwithstanding any other provision of this Agreement, as between Canada and the United States, any measure adopted or maintained with respect to cultural industries, except as specifically provided in Article 302 (Market Access - Tariff Elimination), and any measure of equivalent commercial effect taken in response, shall be governed under this Agreement exclusively in accordance with the provisions of the Canada - United States Free Trade Agreement. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States.

Chapter Twenty-Two. FINAL PROVISIONS

Article 2201. Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

Article 2202. Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 2203. Entry Into Force

This Agreement shall enter into force on January 1, 1994, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 2204. Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country.

2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

Article 2205. Withdrawal

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

Article 2206. Authentic Texts

The English, French and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Annex I. Reservations for Existing Measures and Liberalization Commitments

1. The Schedule of a Party sets out, pursuant to Articles 1108(1) (Investment), 1206(1) (Cross-Border Trade in Services) and 1409(4) (Financial Services), the reservations taken by that Party with respect to existing measures that do not conform with

obligations imposed by:

(a) Article 1102, 1202 or 1405 (National Treatment),

(b) Article 1103, 1203 or 1406 (Most-Favored-Nation Treatment),

(c) Article 1205 (Local Presence),

(d) Article 1106 (Performance Requirements), or

(e) Article 1107 (Senior Management and Boards of Directors),

and, in certain cases, sets out commitments for immediate or future liberalization.

2. Each reservation sets out the following elements:

(a) Sectorrefers to the general sector in which the reservation is taken;

(b) Sub-Sector refers to the specific sector in which the reservation is taken;

(c) Industry Classification refers, where applicable, to the activity covered by the reservation according to domestic industry classification codes;

(d) Type of Reservation specifies the obligation referred to in paragraph 1 for which a reservation is taken;

(e) Level of Government indicates the level of government maintaining the measure for which a reservation is taken;

(f) Measures identifies the laws, regulations or other measures, as qualified, where indicated, by the Description element, for which the reservation is taken. A measure cited in the Measures element

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;

(g) Description sets out commitments, if any, for liberalization on the date of entry into force of this Agreement, and the remaining non-conforming aspects of the existing measures for which the reservation is taken; and

(h) Phase-Out sets out commitments, if any, for liberalization after the date of entry into force of this Agreement.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapters against which the reservation is taken. To the extent that:

(a) the Phase-Out element provides for the phasing out of non-conforming aspects of measures, the Phase-Outelement shall prevail over all other elements;

(b) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(c) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a reservation for that measure taken with respect to Article 1202, 1203 or 1205 or Article 1404, 1405 or 1406 shall operate as a reservation with respect to Article 1102, 1103 or 1106 to the extent of that measure.

5. For purposes of this Annex:

CMAP means Clasificación Mexicana de Actividades y Productos (CMAP) numbers as set out in Instituto Nacional de Estadística, Geografía e Informática, Clasificación Mexicana de Actividades y Productos, 1988;

concession means an authorization provided by the State to a person to exploit a natural resource or provide a service, for which Mexican nationals and Mexican enterprises are granted priority over foreigners;

CPC means Central Product Classification (CPC) numbers as set out in Statistical Office of the United Nations, Statistical

Papers, Series M, No. 77, Provisional Central Product Classification, 1991;

foreigners' exclusion clause means the express provision in an enterprise's by-laws stating that the enterprise shall not allow foreigners, directly or indirectly, to become partners or shareholders of the enterprise;

international cargo means goods that have an origin or destination outside the territory of a Party;

Mexican enterprise means an enterprise constituted under the law of Mexico; and

SIC means:

(a) with respect to Canada, Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980; and

(b) with respect to the United States, Standard Industrial Classification (SIC) numbers as set out in the United States Office of Management and Budget, Standard Industrial Classification Manual, 1987.

Annex I. Schedule of Canada

Sector: Agriculture

Sub-Sector:

Industrial Classification:

Type of Reservation : National Treatment (Article 1102)

Level of Government: Federal

Measures: Farm Credit Act, R.S.C. 1985, c. F2

Farm Credit Regulations, C.R.C. 1978, c. 644

Description: Investment

Loans by the Farm Credit Corporation may be made only to:

(a) individuals who are Canadian citizens or permanent residents;

(b) farming corporations controlled by Canadian citizens or permanent residents; or

(c) cooperative farm associations, all members of which are Canadian citizens or permanent residents.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

As qualified by paragraphs 8 through 12 of the Description element

Description: Investment

1. Under the Investment Canada Act, the following acquisitions of Canadian businesses by "non-Canadians" are subject to review by Investment Canada:

(a) all direct acquisitions of Canadian businesses with assets of C$5 million or more;

(b) all indirect acquisitions of Canadian businesses with assets of C$50 million or more; and

(c) indirect acquisitions of Canadian businesses with assets between C$5 million and C$50 million that represent more than 50 percent of the value of the assets of all the entities the control of which is being acquired, directly or indirectly, in the transaction in question.

2. A "non-Canadian" is an individual, government or agency thereof or an entity that is not "Canadian". "Canadian" means a Canadian citizen or permanent resident, government in Canada or agency thereof or Canadian-controlled entity as provided for in the Investment Canada Act.

3. In addition, specific acquisitions or new businesses in designated types of business activities relating to Canada's cultural heritage or national identity, which are normally notifiable, may be reviewed if the Governor in Council authorizes a review in the public interest.

4. An investment subject to review under the Investment Canada Act may not be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada. Such a determination is made in accordance with six factors described in the Act, summarized as follows:

(a) the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the utilization of parts, components and services produced in Canada, and on exports from Canada;

(b) the degree and significance of participation by Canadians in the investment;

(c) the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Canada;

(d) the effect of the investment on competition within any industry or industries in Canada;

(e) the compatibility of the investment with national industrial, economic and cultural policies, taking intoconsideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and

(f) the contribution of the investment to Canada's ability to compete in world markets.

5. In making a net benefit determination, the Minister, through Investment Canada, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit undertakings to the Minister in connection with any proposed acquisition which is the subject of review. In the event of noncompliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorized under the Act.

6. Non-Canadians who establish or acquire Canadian businesses, other than those described above, must notify Investment Canada.

7. Investment Canada will review an "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by an investor of Mexico or of the United States if the value of the gross assets of the Canadian business is not less than the applicable threshold.

8. The review threshold applicable to investors of Mexico or of the United States, calculated as set out in the Phase-Out element, is higher than those described in paragraph 1. However, this higher review threshold does not apply in the following sectors: uranium production and ownership of uranium producing properties; oil and gas; financial services; transportation services; and cultural businesses.

9. Notwithstanding the definition of "investor of a Party" in Article 1139, only investors who are nationals, or entities controlled by nationals as provided for in the Investment Canada Act, of Mexico or of the United States may benefit from the higher review threshold.

10. An indirect "acquisition of control" of a Canadian business by an investor of Mexico or of the United States is not reviewable.

11. Notwithstanding Article 1106(1), Canada may impose requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of another Party or of a non-Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada, in connection with the review of an acquisition of an investment under the Investment Canada Act.

12. Except for requirements, commitments or undertakings relating to technology transfer as set out in paragraph 11, Article 1106(1) shall apply to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act. Article 1106(1) shall not be construed to apply to any requirement, commitment or undertaking imposed or enforced in connection with a review under the Investment Canada Act, to locate production, carry out research and development, employ or train workers, or to construct or expand particular facilities, in Canada.

Phase-Out: For investors of Mexico or of the United States, the applicable threshold for the review of a direct acquisition of control of a Canadian business will be:

(a) for the 12-month period beginning on the date of entry into force of this Agreement, the monetary amount asdetermined in accordance with Annex 1607.3 of the Canada - United States Free Trade Agreement; and

(b) beginning one year after the date of entry into force of this Agreement, the monetary amount for the preceding year multiplied by an annual adjustment representing the increase in nominal Gross Domestic Product, as set out below.

The calculation of the annual adjustment will be determined in January of each year after 1994 using the most recently available data published by Statistics Canada and using the following formula:

Annual Adjustment = Current nominal GDP at market prices / Previous year nominal GDP at market prices

"Current nominal GDP at market prices" means the arithmetic mean of the nominal Gross Domestic Product at market prices for the most recent four consecutive quarters (seasonally adjusted at annual rates).

"Previous year nominal GDP at market prices" means the arithmetic mean of the nominal Gross Domestic Product at market prices for the four consecutive quarters (seasonally adjusted at annual rates) for the comparable period in the year preceding the year used in calculating the "current nominal GDP at market prices".

The amounts determined in this manner will be rounded to the nearest million dollars.

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal, Provincial

Measures: As set out in the Description element

Description: Investment

Canada or any province, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of another Party or of a non-Party or their investments. With respect to such a sale or other disposition, Canada or any province may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

For purposes of this reservation:

(a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and

(b) "state enterprise" means an enterprise owned or controlled through ownership interests by Canada or a province and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Canada Business Corporations Act, R.S.C. 1985, c. C44

Canada Corporations Act, R.S.C. 1970, c. C32

Canada Business Corporations Act Regulations, SOR/79-316

Description: Investment

"Constraints" may be placed on the issue, transfer and ownership of shares in federally incorporated corporations. The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits. In order to maintain certain "Canadian" ownership levels, a corporation is permitted to sell shareholders' shares without the consent of those shareholders, and to purchase its own shares on the open market. "Canadian" is defined in the Canada Business Corporations Act Regulations.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Act Regulations, SOR/79-316

Canada Corporations Act, R.S.C. 1970, c. C-32

Special Acts of Parliament incorporating specific companies

Description: Investment

The Canada Business Corporations Act requires that a simple majority of the board of directors, or of a committee thereof, of a federally-incorporated corporation be resident Canadians. For purposes of the Act, "resident Canadian" means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the Canada Business Corporations Act Regulations, or a permanent resident as defined in the Immigration Act other than one who has been ordinarily resident in Canada for more than one year after he became eligible to apply for Canadian citizenship.

In the case of a holding corporation, not more than one-third of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than five percent of the gross earnings of the holding corporation and its subsidiaries.

Under the Canada Corporations Act, a simple majority of the elected directors of a Special Act corporation must be resident in Canada and citizens of a Commonwealth country. This requirement applies to every joint stock company incorporated subsequent to June 22, 1869 by any Special Act of Parliament.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Citizenship Act, R.S.C. 1985, c. C29

Foreign Ownership of Land Regulations, SOR/79-416

Description: Investment

The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Alberta Agricultural and Recreational Land Ownership Act. In Alberta, an ineligible person or foreign-owned or controlled corporation may only hold an interest in controlled land consisting of not more than two parcels containing, in the aggregate, not more than 20 acres. An "ineligible person" is:

(a) an individual who is not a Canadian citizen or permanent resident;

(b) a foreign government or agency thereof; or

(c) a corporation incorporated elsewhere than in Canada.

"Controlled land" means land in Alberta but does not include:

(a) land other than land owned by the Crown;

(b) land within a city, town, new town, village or summer village; and

(c) mines or minerals.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.)

Canada Development Corporation Reorganization Act, S.C. 1985, c. 49

Petro-Canada Public Participation Act, S.C. 1991, c. 10

Canadian Arsenals Limited Divestiture Authorization Act, S.C. 1986, c. 20

Cooperative Energy Act, S.C. 1980818283, c. 108

Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

Description: Investment

A "nonresident" may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For each company the restriction is as follows:

Air Canada: 25 percent

Canada Development Corporation: 25 percent

Petro-Canada Inc: 25 percent

Canadian Arsenals Limited: 25 percent

Eldorado Nuclear Limited: 5 percent

Nordion Limited: 25 percent

Theratronics Limited: 49 percent

Cooperative Energy Corporation: 49 percent

"Nonresident" generally means:

(a) an individual, other than a Canadian citizen, who is not ordinarily resident in Canada;

(b) a corporation incorporated, formed or otherwise organized outside Canada;

(c) the government of a foreign state or any political subdivision thereof, or a person empowered to perform a function or duty on behalf of such a government;

(d) a corporation that is controlled directly or indirectly by nonresidents as defined in any of paragraphs (a) through (c) ;

(e) a trust

(i) established by a nonresident as defined in any of paragraphs (b) through (d), other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or

(ii) in which nonresidents as defined in any of paragraphs (a) through (d) have more than 50 percent of the beneficial interest; or

(f) a corporation that is controlled directly or indirectly by a trust referred to in paragraph (e).

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: Local Presence (Article 1205)

Level of Government: Federal

Measures: Export and Import Permits Act, R.S.C. 1985, c. E-19

Description: Cross-Border Services

Only individuals ordinarily resident in Canada, enterprises having their head offices in Canada or branch offices in Canada of foreign enterprises may apply for and be issued import or export permits or transit authorization certificates for goods and related services subject to controls under the Export and Import Permits Act.

Phase-Out: None

Sector: Automotive

Sub-Sector:

Industrial Classification:

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Canada - United States Free Trade Agreement Implementation Act, S.C. 1988, c. 65

Description: Investment

Canada may grant waivers of customs duties conditioned, explicitly or implicitly, on the fulfillment of performance requirements:

(a) to those manufacturers of automotive goods set out in Part One of Annex 1002.1 of the Canada - United States Free Trade Agreement, in accordance with the headnote to that Part; and

(b) for the applicable periods specified in Article 1002(2) and (3) of the Canada - United States Free Trade Agreement to those manufacturers of automotive goods set out in Parts Two and Three, respectively, of Annex 1002.1 of that Agreement.

Phase-Out:

(a) None

(b) For Part Two, until January 1, 1998; and for Part Three, until January 1, 1996 or such earlier date specified in existing agreements between Canada and the recipient of the waiver.

Sector: Business Service Industries

Sub-Sector: Customs Brokerages and Brokers

Industry Classification: SIC 7794 - Customs Brokers

Type of Reservation: National Treatment (Article 1202)

Local Presence (Article 1205)

Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs Brokers Licensing Regulations, SOR/86-1067

Description: Cross-Border Services and Investment

To be a licensed customs broker or brokerage in Canada:

(a) an individual must be a Canadian citizen or permanent resident;

(b) a corporation must be incorporated in Canada with a majority of its directors being Canadian citizens or permanent residents; and

(c) a partnership must be composed of persons who are Canadian citizens or permanent residents, or corporations incorporated in Canada with a majority of their directors being Canadian citizens or permanent residents.

An individual who is not a licensed customs broker but who transacts business as a customs broker on behalf of a licensed customs broker or brokerage must be a Canadian citizen or permanent resident.

Phase-Out: None. Subject to discussion by the Parties five years after the date of entry into force of this Agreement.

Sector: Business Service Industries

Sub-Sector: Duty Free Shops

Industry Classification: SIC 6599 - Other Retail Stores, Not Elsewhere Classified (limited to duty free shops)

Type of Reservation: National Treatment (Articles 1102, 1202)

Local Presence (Article 1205)

Level of Government: Federal

Measures: Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Duty Free Shop Regulations, SOR/86-1072

Description: Cross-Border Services and Investment

1. To be a licensed duty free shop operator at a land border crossing in Canada, an individual must:

(a) be a Canadian citizen or permanent resident;

(b) be of good character;

(c) be principally resident in Canada; and

(d) have resided in Canada for at least 183 days of the year preceding the year of application for the license.

2. To be a licensed duty free shop operator at a land border crossing in Canada, a corporation must:

(a) be incorporated in Canada; and

(b) have all of its shares beneficially owned by Canadian citizens or permanent residents who meet the requirements of paragraph 1.

Phase-Out: None

Sector: Business Service Industries

Sub-Sector: Examination Services relating to the Export and Import of Cultural Property

Industry Classification: SIC 999 - Other Services, Not Elsewhere Classified

(limited to cultural property examination services)

Type of Reservation: Local Presence (Article 1205)

Level of Government: Federal

Measures: Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

Description: Cross-Border Services

Only a "resident of Canada" or an "institution" in Canada may be designated as an "expert examiner" of cultural property for purposes of the Cultural Property Export and Import Act. A "resident" of Canada is an individual who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees employed in connection with the business of the corporation ordinarily report for work. An "institution" is an institution that is publicly owned and operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them.

Phase-Out: None

Sector: Business Service Industries

Sub-Sector: Patent Agents and Agencies

Industry Classification: SIC 999 - Other Services, Not Elsewhere Classified (limited to patent agency)

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Patent Act, R.S.C. 1985, c. P-4

Patent Rules, C.R.C. 1978, c. 1250

Patent Cooperation Treaty Regulations, SOR/89-453

Description: Cross-Border Services

To represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

A registered patent agent who is not resident in Canada must appoint a registered patent agent who is resident in Canada as an associate to prosecute an application for a patent.

An enterprise may be added to the patent register provided that it has at least one member who is also on the register.

Phase-Out: Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3).

Sector: Business Service Industries

Sub-Sector: Trade-Mark Agents

Industry Classification: SIC 999 - Other Services, Not Elsewhere Classified (limited to trade-mark agency)

Type of Reservation: National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Level of Government: Federal

Measures: Trade-Marks Act, R.S.C. 1985, c. T-13

Trade-Marks Regulations, C.R.C. 1978, c. 1559

Description: Cross-Border Services

To represent persons in the presentation and prosecution of applications for trade-marks or in other business before the Trade-Mark Office, a trade-mark agent must be resident in Canada and registered by the Trade-Mark Office.

A registered trade-mark agent who is not resident in Canada must appoint a registered trade-mark agent who is resident in Canada as an associate to prosecute an application for a trade-mark.

Trade-mark agents who are resident, and are registered (in good standing), in a Commonwealth country or the United States may be added to the register of trade-mark agents.

Phase-Out: Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3).

Sector: Energy

Sub-Sector: Oil and Gas

Industry Classification: SIC 071 - Crude Petroleum and Natural Gas Industries

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.)

Territorial Lands Act, R.S.C. 1985, c. T7

Public Lands Grants Act, R.S.C. 1985, c. P30

Canada Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Canada Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada Oil and Gas Land Regulations, C.R.C. 1978, c. 1518

Description: Investment

This reservation applies to production licenses issued with respect to "frontier lands" and "offshore areas" (areas not under provincial jurisdiction) as defined in the applicable measures.

Persons who hold oil and gas production licenses or shares therein for discoveries made after March 5, 1982 must be Canadian citizens ordinarily resident in Canada, permanent residents or corporations incorporated in Canada. No production license may be issued for discoveries made after March 5, 1982 unless the Minister of Energy, Mines and Resources is satisfied that the Canadian ownership rate of the interestowner in relation to the production license on the date of issuance would not be less than 50 percent. "Interest-owner" isdefined in the Canada Petroleum Resources Act to mean "the interest holder who owns an interest or the group of interest holders who hold all the shares of an interest".

The Canadian ownership requirements for oil and gas production licenses for discoveries made prior to March 5, 1982, are set out in the Canada Oil and Gas Land Regulations.

Phase-Out: None

Sector: Energy

Sub-Sector: Oil and Gas

Industry Classification: SIC 071 - Crude Petroleum and Natural Gas Industries

Type of Reservation: Performance Requirements (Article 1106) Local Presence (Article 1205)

Level of Government: Federal

Measures: Canada Oil and Gas Production and Conservation Act, R.S.C. 1985, c. O-7, as amended by Canada Oil and Gas Operations Act, S.C. 1992, c. 35

Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Measures implementing Yukon Oil and Gas Accord

Measures implementing Northwest Territories Oil and Gas Accord

Description: Cross-Border Services and Investment

1. Under the Canada Oil and Gas Operations Act, the approval of the Minister of Energy, Mines and Resources of a "benefits plan" is required to receive authorization to proceed with any oil and gas development project.

2. A "benefits plan" is a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work oractivity referred to in the benefits plan. The Act permits the Minister to impose an additional requirement on the applicant, as part of the benefits plan, to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in any proposed work referred to in the benefits plan.

3. The Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada - Newfoundland Atlantic Accord Implementation Act have the same requirement for a benefits plan but also require that the benefits plan ensure that:

(a) prior to carrying out any work or activity in the offshore area, the corporation or other body submitting the plan establish in the applicable province an office where appropriate levels of decision-making are to take place;

(b) expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and

(c) first consideration be given to goods produced or services provided from within the province, where those goods or services are competitive in terms of fair market price, quality and delivery.

4. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in any proposed work or activity referred to in the plan.

5. In addition, Canada may impose any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts.

6. Provisions similar to those set out above will be included in laws or regulations to implement the Yukon Oil and Gas Accord and Northwest Territories Oil and Gas Accord which for purposes of this reservation shall be deemed, once concluded, to be existing measures.

Phase-Out: None

Sector: Energy

Sub-Sector: Oil and Gas

Industry Classification: SIC 071 - Crude Petroleum and Natural Gas Industries

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Hibernia Development Project Act, S.C. 1990, c. 41

Description: Investment

Pursuant to the Hibernia Development Project Act, Canada and the "Hibernia Project Owners" may enter into agreements

whereby the Project Owners undertake to perform certain work in Canada and Newfoundland and to use their "best efforts" to achieve specific Canadian and Newfoundland "target levels" in relation to the provisions of any "benefit plan" required under the Canada-Newfoundland Atlantic Accord Implementation Act. "Benefits plans" are further described in Schedule of Canada, Annex I, page I-C-25.

In addition, Canada may impose in connection with the Hibernia project any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Phase-Out: None

Sector: Energy

Sub-Sector: Uranium

Industry Classification: SIC 0616 - Uranium Mines

Type of Reservation: National Treatment (Article 1102)

Most-Favored-Nation Treatment (Article 1103)

Level of Government: Federal

Measures: Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

Policy on NonResident Ownership in the Uranium Mining Sector, 1987

Description: Investment

Ownership by "non-Canadians", as defined in the Investment Canada Act, of a uranium mining property is limited to 49 percent at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadiancontrolled" as defined in the Investment Canada Act.

Exemptions from the policy are permitted, subject to approval of the Governor in Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by nonCanadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. No increase in nonCanadian ownership is permitted.

Phase-Out: None

Sector: Fisheries

Sub-Sector: Fish Harvesting and Processing

Industry Classification: SIC 031 - Fishing Industry

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Level of Government: Federal

Measures: Coastal Fisheries Protection Act, R.S.C. 1985, c. C33

Fisheries Act, R.S.C. 1985, c. F14

Coastal Fisheries Protection Regulations, C.R.C. 1978, c. 413

Policy on Foreign Investment in the Canadian Fisheries Sector, 1985

Commercial Fisheries Licensing Policy

Description: Investment

Under the Coastal Fisheries Protection Act, foreign fishing vessels are prohibited from entering Canada's Exclusive Economic Zone except under authority of a license or under treaty. "Foreign" vessels are those which are not "Canadian" as defined in the Coastal Fisheries Protection Act. Under the Fisheries Act, the Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licenses.

Fish processing enterprises that have a foreign ownership level of more than 49 percent are prohibited from holding Canadian commercial fishing licenses.

Phase-Out: None

Sector: Fisheries

Sub-Sector: Fishing-Related Services

Industry Classification: SIC 032 - Services Incidental to Fishing

Type of Reservation: National Treatment (Article 1202)

Most-Favored-Nation Treatment (Article 1203)

Level of Government: Federal

Measures: Coastal Fisheries Protection Act, R.S.C. 1985, c. C-33

Description: Cross-Border Services

Under the Coastal Fisheries Protection Act, the Department of Fisheries and Oceans is responsible for controlling the activities of foreign fishing vessels in Canada's Exclusive Economic Zone, including access to Canadian ports (port privileges).

In general, the Department grants such port privileges, including the purchase of fuel and supplies, ship repair, crew exchanges and transshipment of fish catches, only to fishing vessels from a country with which it has favorable fishery relations, based primarily on adherence by that country to Canadian and international conservation practices and policies. Exceptions to this general rule are permitted in cases of emergency ("force majeure") and where the specific provisions of bilateral fisheries treaties apply.

Phase-Out: None

Sector :Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 451 - Air Transport Industries

Type of Reservation: National Treatment (Article 1102)

Most-Favored-Nation Treatment (Article 1103) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: National Transportation Act, 1987, R.S.C. 1985, c. 28 (3rd Supp.)

Aeronautics Act, R.S.C. 1985, c. A2

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90-591

Description: Investment

Only "Canadians" may provide the following commercial air transportation services:

(a) "domestic services" (air services between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country) ;

(b) "scheduled international services" (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future bilateral agreements; and

(c) "nonscheduled international services" (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where thoseservices have been reserved to Canadian carriers under the National Transportation Act, 1987.

"Canadian" is defined in the National Transportation Act, 1987 to mean a Canadian citizen or permanent resident, a

government in Canada or agent thereof or any other person or entity that is controlled in fact by, and of which at least 75 percent of the voting interests are owned and controlled by, persons otherwise meeting these requirements.

Regulations made under the Aeronautics Act also require that a Canadian air carrier operate Canadian-registered aircraft. To be qualified to register aircraft in Canada, a carrier must be a Canadian citizen or permanent resident, or a corporation incorporated and having its principal place of business in Canada, its chief executive officer and not fewer than two-thirds of its directors as Canadian citizens or permanent residents and not less than 75 percent of its voting interest owned and controlled by persons otherwise meeting these requirements. In addition, all commercial air services in Canada require a Canadian operating certificate to ensure their safety and security. An operating certificate for the provision of services restricted to Canadian carriers is issued only to qualified persons.

A corporation incorporated in Canada but that does not meet the Canadian ownership and control requirements may only register a private aircraft when the corporation is the sole owner of the aircraft. The regulations also have the effect of limiting "nonCanadian" corporations operating foreign-registered private aircraft within Canada to the carriage of their own employees.

For specialty air services, see Schedule of Canada, Annex II, page II-C-10.

Phase-Out: None

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 4513 - Non-Scheduled Air Transport, Specialty, Industry

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Aeronautics Act, R.S.C. 1985, c. A-2

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90-591

Foreign Air Carrier Certification Manual, TP 11524, and the Personnel Licensing Handbook, TP 193 (Department of Transport)

As qualified by paragraph 2 of the Description element

Description: Cross-Border Services

1. An operating certificate issued by the Department of Transport is required to provide specialty air services in the territory of Canada. The Department of Transport will issue an operating certificate to a person applying for authority to provide specialty air services, subject to compliance by that person with Canadian safety requirements. An operating certificate for the provision of aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing, and aerial spraying services is not issued to a person that is not Canadian as provided for in the applicableregulations. For investment, see Schedule of Canada, Annex II, page II-C-10.

2. A person of Mexico or of the United States may obtain an operating certificate, subject to compliance by that person with Canadian safety requirements, for the provision of aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing and parachute jumping services.

Phase-Out: Cross-Border Services

A person of Mexico or of the United States will be permitted to obtain an operating certificate, subject to compliance by that person with Canadian safety requirements, for the provision of the following specialty air services:

(a) two years after the date of entry into force of this Agreement, aerial construction and heli-logging services;

(b) three years after the date of entry into force of this Agreement, aerial inspection, aerial surveillance, flight training, and aerial sightseeing services; and

(c) six years after the date of entry into force of this Agreement, aerial spraying services.

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 4523 - Aircraft Servicing Industry

SIC 3211 - Aircraft and Aircraft Parts Industry

Type of Reservation: Most-Favored-Nation Treatment (Article 1203)

Local Presence (1205)

Level of Government: Federal

Measures: Aeronautics Act, R.S.C. 1985, c. A-2

Airworthiness Manual, chapters 573 and 575, made under the authority of Air Regulations, C.R.C. 1978, c. 2

Agreement Concerning Airworthiness Certification, Exchange of Letters between Canada and the United States, dated August 31, 1984, CTS 1984/26

Description: Cross-Border Services

Aircraft repair, overhaul or maintenance activities required to maintain the airworthiness of Canadian-registered aircraft must be performed by Canadian-certified persons (approved maintenance organizations and aircraft maintenance engineers). Certifications are not provided for persons located outside Canada, except sub-organizations of approved maintenance organizations that are themselves located in Canada.

Pursuant to an airworthiness agreement between Canada and the United States, Canada recognizes the certifications and oversight provided by the United States for all repair, overhaul and maintenance facilities and individuals performing the work located in the United States.

Phase-Out: None

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: SIC 456 - Truck Transport Industries

SIC 4572 - Interurban and Rural Transit Systems Industry

SIC 4573 - School Bus Operations Industry

SIC 4574 - Charter and Sightseeing Bus Services Industry

Type of Reservation: National Treatment (Article 1202)

Local Presence (Article 1205)

Measures: Motor Vehicle Transport Act, 1987, R.S.C. 1985, c. 29 (3rd Supp.), Parts I and II

National Transportation Act, 1987, R.S.C. 1985, c. 28 (3rd Supp.), Part IV

Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.)

Description: Cross-Border Services

Only persons of Canada, using Canadian-registered and either Canadian-built or duty-paid trucks or buses, may provide truck or bus services between points in the territory of Canada.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4541 - Freight and Passenger Water Transport Industry

SIC 4542 - Ferry Industry

SIC 4543 - Marine Towing Industry

SIC 4549 - Other Water Transport Industries

SIC 4553 - Marine Salvage Industry

SIC 4559 - Other Service Industries Incidental to Water Transport

Type of Reservation: National Treatment (Article 1202)

Most-Favored-Nation Treatment (Article 1203)

Local Presence (Article 1205)

Level of Government: Federal

Measures: Canada Shipping Act, R.S.C. 1985, c. S-9, Part II

Description: Cross-Border Services

To register a vessel in Canada for purposes of providing international maritime transportation services, the owner of that vessel must be:

(a) a Canadian citizen or a citizen of a Commonwealth country; or

(b) a corporation incorporated under the laws of, and having its principal place of business in, Canada or a Commonwealth country.

For domestic maritime transportation services (cabotage), see Schedule of Canada, Annex II, page II-C-11.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4541 - Freight and Passenger Water Transport Industry

SIC 4542 - Ferry Industry

SIC 4543 - Marine Towing Industry

SIC 4549 - Other Water Transport Industries

SIC 4553 - Marine Salvage Industry

SIC 4554 - Piloting Service, Water Transport Industry

SIC 4559 - Other Service Industries Incidental to Water Transport

Type of Reservation: National Treatment (Article 1202)

Local Presence (Article 1205)

Level of Government: Federal

Measures: Canada Shipping Act, R.S.C. 1985, c. S-9, Part II

Description: Cross-Border Services

Masters, mates, and engineers must be certified by the Department of Transport as ship's officers while engaged on a Canadian-registered vessel. Only Canadian citizens or permanent residents may be certified as ship's officers.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4554 - Piloting Service, Water Transport Industry

Type of Reservation: National Treatment (Article 1202)

Local Presence (Article 1205)

Level of Government: Federal

Measures: Pilotage Act, R.S.C. 1985, c. P-14

General Pilotage Regulations, C.R.C. 1978, c. 1263

Atlantic Pilotage Authority Regulations, C.R.C. 1978, c. 1264

Laurentian Pilotage Authority Regulations, C.R.C. 1978, c. 1268

Great Lakes Pilotage Regulations, C.R.C. 1978, c. 1266

Pacific Pilotage Regulations, C.R.C. 1978, c. 1270

Description: Cross-Border Services

Subject to Schedule of Canada, Annex II, page II-C-14, a license issued by the Department of Transport is required to provide pilotage services in the territory of Canada. Only Canadian citizens or permanent residents may obtain such a license. A permanent resident of Canada who has been issued a pilot's license must become a Canadian citizen within five years of receipt of the license in order to retain it.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 454 - Water Transport Industries

Type of Reservation: Local Presence (Article 1205)

Level of Government: Federal

Measures: Shipping Conferences Exemption Act, 1987, R.S.C. 1985, c. 17 (3rd Supp.)

Description: Cross-Border Services

Members of a shipping conference must maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4541 - Freight and Passenger Water Transport Industry

SIC 4542 - Ferry Industry

SIC 4543 - Marine Towing Industry

Type of Reservation: Most-Favored-Nation Treatment (Article 1203)

Level of Government: Federal

Measures: Coasting Trade Act, S.C. 1992, c. 31

Description: Cross-Border Services

The prohibitions under the Coasting Trade Act, set out in Schedule of Canada, Annex II, page II-C-11, do not apply to any vessel that is owned by the U.S. Government when used solely for the purpose of transporting goods owned by the U.S.

Government from the territory of Canada to supply Distant Early Warning sites.

Phase-Out: None

Annex I. Schedule of Mexico

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 27

Ley de Nacionalidad y Naturalización, Capítulos IV, VI

Ley Orgánica de la Fracción I del Artículo 27 de la Constitución

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, IV, V

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulos I, II; Título III, Capítulo III; Título VI; Título VIII, Capítulo IV

Description: Investment

Foreign nationals or foreign enterprises, or Mexican enterprises without a foreigners' exclusion clause, may not acquire property rights ("dominio directo") over land and water in a 100-kilometer strip along the country's borders or in a 50-kilometer strip inland from its coasts (the Restricted Zone). Lease of land for more than 10 years is deemed to be an acquisition.

Foreign nationals, foreign enterprises or Mexican enterprises may acquire "Certificados de Participación Inmobiliaria" (CPI's). CPI's grant the beneficiaries the right to use and enjoy property and to receive the profits that it may obtain from the profitable use of property.

CPI's are issued by a Mexican credit institution that has been granted authorization to acquire through trust the title to real estate intended for industrial and tourism activities in the Restricted Zone for a period not to exceed 30 years. The trust is renewable if:

(a) the beneficiaries of the trust that is to be extinguished or terminated will be the beneficiaries of the new trust;

(b) the new trust is to be executed under the same terms and conditions as the trust that is to be extinguished or terminated, in respect of the purposes of the trust, the use of the property and its characteristics;

(c) the respective permits are requested within a period of 360 to 181 days preceding the termination or extinction of the trust; and

(d) the provisions of the Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera are observed.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation:

Level of Government: National Treatment (Article 1102)

Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulos I, III, IV; Título IV; Título V; Título VIII, Capítulos I-V; Título IX, Capítulos I, II, III

As qualified by the Description element

Description: Investment

The Comisión Nacional de Inversiones Extranjeras, in order to evaluate applications submitted for its consideration (acquisitions or establishment of investments in restricted activities as set out in this Schedule), shall take into account the following criteria:

(a) its effects on employment and training;

(b) its technological contribution; or

(c) in general, its contribution to increase Mexican industrial productivity and competitiveness.

The Comisión Nacional de Inversiones Extranjeras may impose performance requirements that are not prohibited by Article 1106.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I-V; Título IX, Capítulos I, II, III

As qualified by the Description element

Description: Investment

The Comisión Nacional de Inversiones Extranjeras will only review direct or indirect acquisitions by an investor of another Party of more than 49 percent of the ownership interest in a Mexican enterprise in an unrestricted sector, that is directly or indirectly owned or controlled by Mexican nationals, if the value of the gross assets of the Mexican enterprise is not less than the applicable threshold.

Phase-Out: For investors and investments of investors of Canada or the United States, the applicable threshold for the review of an acquisition of a Mexican enterprise will be:

(a) US$25 million, for the three-year period beginning on the date of entry into force of this Agreement;

(b) US$50 million, for the three-year period beginning three years after the date of entry into force of this Agreement;

(c) US$75 million, for the three-year period beginning six years after the date of entry into force of this Agreement; and

(d) US$150 million, beginning nine years after the date of entry into force of this Agreement.

Beginning one year after the date of entry into force of this Agreement, each of these thresholds will be adjusted annually for cumulative inflation from the date of entry into force of this Agreement, based on the implicit price deflator for U.S. Gross Domestic Product (GDP) or any successor index published by the Council of Economic Advisors in "Economics Indicators".

The value of a threshold adjusted for cumulative inflation up to January of each year following 1994 shall be equal to the original value of the threshold multiplied by the following ratio:

(a) the implicit GDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of January of that year; to

(b) the implicit GDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of the date of entry into force of this Agreement,

provided that the implicit GDP price deflators under paragraphs (a) and (b) have the same base year.

The resulting adjusted threshold will be rounded to the nearest million dollars.

Beginning 10 years after the date of entry into force of this Agreement, the threshold will be adjusted annually by the rate of growth of the nominal Mexican GDP, as published by the Instituto Nacional de Estadística, Geografía e Informática. Whenever the U.S. dollar amount calculated for the threshold is, at the prevailing market exchange rate, equal to or higher than the amount calculated pursuant to Schedule of Canada, Annex I, page I-C-2, the calculation of the applicable threshold will be made according to the rules established therein. In no case will the threshold, as converted into U.S. dollars, exceed that of Canada.

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 25

Ley General de Sociedades Cooperativas, Título I, Capítulo I; Título II, Capítulo II

Description: Investment

No more than 10 percent of the persons participating in a Mexican cooperative production enterprise may be foreign nationals.

No foreign national may engage in general administrative functions or perform managerial activities in that enterprise.

Phase-Out: None

Sector: All Sectors

Sub-Sector:

Industrial Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley Federal para el Fomento de la Microindustria, Capítulos I, II, III

Description: Investment

Only Mexican nationals may apply for a license ("cédula") to qualify as a microindustry enterprise.

Mexican "microindustry enterprises" may not have foreign persons as partners.

The Ley Federal para el Fomento de las Microindustria defines "microindustry enterprise" as including enterprises with up to fifteen workers and with sales of amounts periodically determined by the Secretaría de Comercio y Fomento Industrial.

Phase-Out: None

Sector: Agriculture, Livestock, Forestry and Lumber Activities

Sub-Sector: Agriculture, Livestock or Forestry

Industry Classification: CMAP 1111 - Agriculture

CMAP 1112 - Livestock and Game (limited to livestock)

CMAP 1200 - Forestry and Felling Trees

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 27

Ley Agraria, Títulos V, VI

Description: Investment

Only Mexican nationals or Mexican enterprises may own land for agriculture, livestock or forestry purposes. Such enterprises must issue a special type of share ("T" shares) representing the value of that land at the time of its acquisition. Investors of another Party or their investments may only own up to 49 percent of "T" shares.

Phase-Out: None

Sector: Communications

Sub-Sector: Entertainment Services (Broadcasting, Multipoint Distribution Systems (MDS) and Cable Television)

Industry Classification: CMAP 941104 - Private Production and Transmission of Radio Programs (limited to production and transmission of radio programs, MDS and uninterrupted music)

CMAP 941105 - Private Services of Production, Transmission and Retransmission of Television Programming (limited to production, transmission and retransmission of television programming, MDS, direct broadcasting systems and high-definition television and cable television)

Type of Reservation: National Treatment (Article 1202)

Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley Federal de Radio y Televisión, Título IV, Capítulo III

Reglamento de la Ley Federal de Radio y Televisión y de la Ley de la Industria Cinematográfica Relativo al Contenido de las Transmisiones de Radio y Televisión, Título III

Reglamento del Servicio de Televisión por Cable, Capítulo VI

Description: Cross-Border Services and Investment

For the protection of copyrights, the holder of a concession for a commercial broadcast station or for a cable television system is required to obtain an authorization from the Secretaría de Gobernación to import in any form radio or televisionprogramming for broadcast or cable distribution within the territory of Mexico.

The authorization will be granted if the application for authorization includes documentation showing that the copyright holder has granted the license ("derechos") to broadcast or distribute by cable such programming.

Phase-Out: None

Sector: Communications

Sub-Sector: Entertainment Services (Broadcasting, Multipoint Distribution Systems (MDS) and Cable Television)

Industry Classification: CMAP 941104 - Private Production and Transmission of Radio Programs (limited to production and transmission of radio programs, MDS and uninterrupted music)

CMAP 941105 - Private Services of Production, Transmission and Retransmission of Television Programming (limited to production, transmission and retransmission of television programming, MDS, direct broadcasting systems, highdefinition television and cable television)

Type of Reservation: National Treatment (Article 1202)

Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley Federal de Radio y Televisión, Título IV, Capítulo III

Reglamento de la Ley Federal de Radio y Televisión y de la Ley de la Industria Cinematográfica Relativo al Contenido de las Transmisiones de Radio y Televisión, Título III

Reglamento del Servicio de Televisión por Cable, Capítulo VI

Description: Cross-Border Services and Investment

The use of the Spanish language is required for the broadcast, cable or multipoint distribution system distribution of radio or television programming, except when the Secretaría de Gobernación authorizes the use of another language.

A majority of the time of each day's live broadcast programs must feature Mexican nationals.

A radio or television announcer or presenter who is not a Mexican national must obtain an authorization from the Secretaría de Gobernación to perform in Mexico.

Phase-Out: None

Sector: Communications

Sub-Sector: Entertainment Services (Broadcasting, Multipoint Distribution Systems (MDS) and Cable Television)

Industry Classification: CMAP 941105 - Private Services of Production, Transmission and Retransmission of Television Programming (limited to broadcasting, cable television and MDS)

Type of Reservation: National Treatment (Article 1202) Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley Federal de Radio y Televisión, Título IV, Capítulo III

Reglamento de la Ley Federal de Radio y Televisión y de la Ley de la Industria Cinematográfica Relativo al Contenido de las Transmisiones de Radio y Televisión, Título III

Reglamento del Servicio de Televisión por Cable, Capítulo VI

Description: Cross-Border Services and Investment

The use of the Spanish language or Spanish subtitles is required for advertising broadcast or otherwise distributed in the territory of Mexico.

Advertising included in programs transmitted directly from outside the territory of Mexico may not be distributed in those programs when they are retransmitted in the territory of Mexico.

Phase-Out: None

Sector: Communications

Sub-Sector: Entertainment Services (Cable Television)

Industry Classification: CMAP 941105 - Private Services of Production, Transmission and Retransmission of Television Programming (limited to cable television)

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley Federal de Radio y Televisión, Título III, Capítulos I, II, III

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento del Servicio de Televisión por Cable, Capítulo II

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

As qualified by the Description element

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise, established or to be established in the territory of Mexico, that owns or operates a cable television system or provides cable television services.

Phase-Out: None. Subject to discussion by the Parties five years after the date of entry into force of this Agreement.

Sector: Communications

Sub-Sector: Entertainment Services (Cable Television)

Industry Classification: CMAP 941105 - Private Services of Production, Transmission and Retransmission of Television Programming (limited to cable television)

Type of Reservation: National Treatment (Article 1202)

Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulo III

Ley de Nacionalidad y Naturalización, Capítulo IV

Ley Federal de Radio y Televisión, Título III, Capítulos I, II, III

Reglamento del Servicio de Televisión por Cable, Capítulo II

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or to operate, a cable television system. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Phase-Out: None

Sector: Communications

Sub-Sector: Entertainment Services (Cinema)

Industry Classification: CMAP 941103 - Private Exhibition of Films

Type of Reservation: National Treatment (Article 1202) Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley de la Industria Cinematográfica

Reglamento de la Ley de la Industria Cinematográfica

As qualified by the Description element

Description: Cross-Border Services and Investment

Thirty percent of the screen time of every theater, assessed on an annual basis, may be reserved for films produced by Mexican persons either within or outside the territory of Mexico.

Phase-Out: None

Sector: Communications

Sub-Sector: Telecommunications (Enhanced or ValueAdded Services)

Industry Classification: CMAP 720006 - Other Telecommunications Services (limited to enhanced or valueadded services)

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Ley de Vías Generales de Comunicación, Libro I, Capítulo III

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de Telecomunicaciones, Capítulo IV

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

As qualified by paragraphs 2 and 4 of the Description element

Description: Cross-Border Services

1. A provider of enhanced or valueadded services must obtain a permit issued by the Secretaría de Comunicaciones y Transportes.

2. Persons of Canada or the United States may provide all enhanced or valueadded services, except videotext or enhanced packet switching services, without the need to establish local presence.

3. Videotext and enhanced packet switching services may not be provided on a Cross-Border basis.

Investment

4. Investors of another Party or their investments may own 100 percent of the ownership interest in an enterprise, established or to be established in the territory of Mexico, that provides any enhanced or valueadded service, other than videotext or enhanced packet switching services.

5. Investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise, established or to be established in the territory of Mexico, that provides videotext or enhanced packet switching services.

Phase-Out: Cross-Border Services

Beginning July 1, 1995, a person of Canada or the United States may provide videotext or enhanced packet switching services on a cross-border basis without the need to establish a local presence in the territory of Mexico.

Investment

Beginning July 1, 1995, investors of another Party or their investments may own 100 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that provides videotext or enhanced packet switching services.

Sector: Communications

Sub-Sector: Transportation and Telecommunications

Industry Classification: CMAP 7200 - Communications (including telecommunications and postal services)

CMAP 7100 - Transportation

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley de Vías Generales de Comunicación, Libro I, Capítulos III, V

Reglamento de Telecomunicaciones, Capítulo III

Description: Investment

Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in Mexican enterprises engaged in communications, transportation and other general means of communication ("vías generales de comunicación") activities, as defined in the Ley de Vías Generales de Comunicación.

Phase-Out: None

Sector: Construction

Sub-Sector:

Industry Classification: CMAP 501101 - Residential or Housing Construction

CMAP 501102 - Nonresidential Construction

CMAP 501200 - Construction of Urbanization Projects

CMAP 501311 - Construction of Industrial Plants

CMAP 501312 - Construction of Electricity Generation Plants

CMAP 501321 - Construction and Maintenance of Electricity Conduction Lines and Networks

CMAP 501411 - Mounting or Installing Concrete Structures

CMAP 501412 - Mounting or Installing Metallic Structures

CMAP 501421 - Marine and River Works

CMAP 501422 - Construction of Routes for Land Transportation

CMAP 502001 - Hydraulic and Sanitation Installations in Buildings

CMAP 502002 - Electrical Installations in Buildings

CMAP 502003 - Telecommunications Installations

CMAP 502004 - Other Special Installations

CMAP 503001 - Earth Movements

CMAP 503002 - Cement Works

CMAP 503003 - Underground Excavations

CMAP 503004 - Underwater Works

CMAP 503005 - Installation of Signs and Warnings

CMAP 503006 - Demolition

CMAP 503007 - Construction of Water Purification or Treatment Plants

CMAP 503009 - Drilling Water Wells

CMAP 503010 - Construction Activities, Not Elsewhere Classified

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Meaures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that performs construction activities as set out in the Industry Classification element.

Phase-Out: Subject to Schedule of Mexico, Annex I, page I-M-4, five years after the date of entry into force of this Agreement,

investors of another Party and their investments may own 100 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico without prior approval of the Comisión Nacional de Inversiones Extranjeras.

Sector: Construction

Sub-Sector:

Industry Classification: CMAP 501322 - Construction of Means for the Transportation of Petroleum and its Derivatives (limited to specialized contractors only)

CMAP 503008 - Petroleum and Gas, Exploration and Drilling Works and Services (limited to specialized contractors only)

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 27

Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo , Capítulos I, V, IX, XII

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Risksharing contracts are prohibited.

Prior approval of the Comisión Nacional de InversionesExtranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico involved in "nonrisk-sharing" contracts for the exploration and drilling works of petroleum and gas wells and the construction of means for the transportation of petroleum and its derivatives. See also Schedule of Mexico, Annex III, page III-M-1.

Phase-Out: None

Sector: Educational Services

Sub-Sector: Private Schools

Industry Classification: CMAP 921101 - Private Preschool Educational Services

CMAP 921102 - Private Primary School Educational Services

CMAP 921103 - Private Secondary School Educational Services

CMAP 921104 - Private Middle High (Preparatory) School Educational Services

CMAP 921105 - Private Higher School Educational Services

CMAP 921106 - Private Educational Services that Combine Preschool, Primary, Secondary, Middle High and Higher School Instruction

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Ley para la Coordinación de la Educación Superior, Capítulo II

Ley Federal de Educación, Capítulo III

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I;

Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percentof the ownership interest in an enterprise established or to be established in the territory of Mexico that provides preschool, primary, secondary, preparatory, higher, worker or peasant, or "normal" educational services.

Phase-Out: None

Sector: Energy

Sub-Sector: Petroleum Products

Industry Classification: CMAP 623050 - Retail Sales of Liquified Petroleum Gas (LPG)

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo, Capítulos I, IX, XII

Reglamento de la Distribución de Gas, Capítulos I,

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may engage in the distribution, transportation, storage, or sale of liquified petroleum gas and the installation of fixed deposits.

Phase-Out: None

Sector: Energy

Sub-Sector: Petroleum Products

Industry Classification: CMAP 626000 - Retail Outlets of Gasoline and Diesel (including lubricants, oils and additives for resale in these retail outlets)

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Reglamento de la Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo, Capítulos I, II, III, V, VII, IX, XII

As qualified by the Description element

Description: Investment

Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may acquire, establish or operate retail outlets engaged in the sale or distribution of gasoline, diesel, lubricants, oils or additives.

Phase-Out: None

Sector: Fishing

Sub-Sector:

Industry Classification: CMAP 130011 - Fishing on the High Seas

CMAP 130012 - Coastal Fishing

CMAP 130013 - Fresh Water Fishing

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Level of Government: Federal

Measures: Ley de Pesca, Capítulos I, II, IV

Ley de Navegación y Comercio Marítimos, Libro II, Título Unico, Capítulo V

Ley Federal del Mar, Título I, Capítulo I

Ley Federal de Aguas

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Reglamento de la Ley de Pesca, Capítulos I, II, III, V, VI, IX,

Description: Investment

With respect to an enterprise established or to be established in the territory of Mexico performing coastal fishing, fresh water fishing and fishing in the Exclusive Economic Zone, investorsof another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in such an enterprise.

With respect to an enterprise established or to be established in the territory of Mexico performing fishing on the high seas, prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest in such an enterprise.

Phase-Out: None

Sector: Manufacturing and Assembly of Goods

Sub-Sector: Auto Parts Industry

Industry Classification: CMAP 383103 - Manufacturing of Parts and Accessories for Electrical Automotive Systems

CMAP 384121 - Manufacture and Assembly of Car and Truck Bodies and Tows

CMAP 384122 - Manufacture of Car and Truck Motors and their Parts

CMAP 384123 - Manufacture of Car and Truck Transmission System Parts

CMAP 384124 - Manufacture of Car and Truck Suspension System Parts

CMAP 384125 - Manufacture of Car and Truck Brake System Parts and Accessories

CMAP 384126 - Manufacture of Other Car and Truck Parts and Accessories

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Decreto para el Fomento y Modernización de la Industria Automotriz ("Auto Decree")

Acuerdo que Determina Reglas para la Aplicación del Decreto para el Fomento y Modernización de la Industria Automotriz

As qualified by the Description element

Description: Investment

1. Investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an "enterprise of the autoparts industry", as defined in Annex 300-A, established or to be established in the territory of Mexico.

2. Investors of another Party or their investments that qualify as "national suppliers", as defined in Annex 300-A, may own 100 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico and that engages in the supply of specified autoparts to producers of motor vehicles.

3. Investors of another Party or their investments may own up to 100 percent of the ownership interest in an enterprise producing autoparts established or to be established in the territory of Mexico, provided that the enterprise does not register with the Secretaría de Comercio y Fomento Industrial for purposes of the Auto Decree nor receive benefits under the Auto Decree. After the five-year transition period set out in the Phase-Out element, such firms shall be eligible to register or to receive benefits set forth in the Auto Decree as modified by Appendix 300-A.2 provided that such enterprise meets the requirements set out therein for national supplier or "enterprise of the autoparts industry" status.

Phase-Out: Five years after the date of entry into force of this Agreement, investors of another Party or their investments may own 100 percent of the ownership interest in any enterprise of the autoparts industry established or to be established in the territory of Mexico.

See Next section, Manufacture of Goods, Automotive Industry.

Sector: Manufacture of Goods

Sub-Sector: Automotive Industry

Industry Classification: CMAP 383103 - Manufacturing of Parts and Accessories for Electrical Automotive Systems

CMAP 3841 - Automotive Industry

CMAP 384121 - Manufacture and Assembly of Car and Truck Bodies and Tows

CMAP 384122 - Manufacture of Car and Truck Motors and their Parts

CMAP 384123 - Manufacture of Car and Truck Transmission System Parts

CMAP 384124 - Manufacture of Car and Truck Suspension System Parts

CMAP 384125 - Manufacture of Car and Truck Brake System Parts and Accessories

CMAP 384126 - Manufacture of Other Car and Truck Parts and Accessories

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Decreto para el Fomento y Modernización de la Industria Automotriz ("Auto Decree")

Acuerdo que Determina Reglas para la Aplicación del Decreto para el Fomento y Modernización de la Industria Automotriz

As qualified by Description element

Description: Investment

As set out in Annex 300-A

Phase-Out: As set out in Annex 300A

Sector: Manufacture of Goods

Sub-Sector: Maquiladora Industry

Industrial Classification:

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley Aduanera, Título IV, Capítulos I, III; Título V, Capítulo II; Título VI

Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación ("Maquiladora Decree")

As qualified by the Description element

Description: Investment

Persons authorized by the Secretaría de Comercio y Fomento Industrial to operate under the Maquiladora Decree may not sell to the domestic market more than 55 percent of the total value of their annual exports in the previous year.

Phase-Out: Sales of a maquiladora to the domestic market may not exceed:

(a) one year after the date of entry into force of this Agreement, 60 percent of the total value of its annual exports in the previous year;

(b) two years after the date of entry into force of this Agreement, 65 percent of the total value of its annual exports in the previous year;

(c) three years after the date of entry into force of this Agreement, 70 percent of the total value of its annual exports in the previous year;

(d) four years after the date of entry into force of this Agreement, 75 percent of the total value of its annual exports in the previous year;

(e) five years after the date of entry into force of this Agreement, 80 percent of the total value of its annual exports in the previous year; and

(f) six years after the date of entry into force of this Agreement, 85 percent of the total value of its annual exports in the previous year.

Seven years after the date of entry into force of this Agreement, sales of a maquiladora to the domestic market will not be subject to any percentage requirement.

Sector: Manufacture of Goods

Sub-Sector:

Industrial Classification:

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior, Capítulo I

Decreto para el Fomento y Operación de las Empresas Altamente Exportadoras, ("ALTEX Decree")

Description: Investment

1. "Direct exporters", as defined in the ALTEX Decree, authorized by the Secretaría de Comercio y Fomento Industrial to operate under that decree must export at least 40 percent of their total sales or US$2,000,000.

2. "Indirect exporters", as defined in ALTEX Decree, authorized by the Secretaría de Comercio y Fomento Industrial to operate under that decree must export at least 50 percent of their total sales.

Phase-Out: Seven years after the date of entry into force of this Agreement, "direct and indirect exporters" will not be subject to the percentage requirements set out in the Description element.

Sector: Manufacture of Goods

Sub-Sector:

Industrial Classification:

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior, Capítulo I

Ley Aduanera, Título III, Capítulo IV; Título IV, Capítulos I, III

Decreto que Establece Programas de Importación Temporal para Producir Artículos de Exportación, ("PITEX Decree")

Description: Investment

Persons authorized by the Secretaría de Comercio y Fomento Industrial to operate under the PITEX Decree are required to export at least:

(a) 30 percent of their total production in order to be permitted to temporarily import duty-free

(i) machinery, equipment, instruments, molds and durable tools used in the manufacturing process, and equipment used to handle materials directly related to the exportation of goods, and

(ii) devices, equipment, accessories or other items related to the production of exported goods, including those used for research, industrial security, quality control, communication, trainingof personnel, informatics and environmental purposes; and

(b) 10 percent of their total production or US$500,000 in order to be permitted to temporarily import duty-free

(i) raw materials, parts and components totally used in the production of exported goods,

(ii) packages, bottles, containers and trailer's containers which are totally used to contain exported goods, and

(iii) fuel, lubricants, auxiliary materials, reparation tools and equipment consumed in the production of exported goods.

Phase-Out: Seven years after the date of entry into force of this Agreement, such persons will not be subject to the percentage requirements set out in the Description element.

Sector: Manufacture of Goods

Sub-Sector: Artificial Explosives, Fireworks, Firearms and Cartridges

Industry Classification: CMAP 352236 - Manufacturing of Artificial Explosives and Fireworks

CMAP 382208 - Manufacturing of Firearms and Cartridges

Type of Reservation: National Treatment (Article 1102)

Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Ley Federal de Armas de Fuego y Explosivos, Título III, Capítulo I

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Federal de Armas de Fuego y Explosivos, Capítulo IV

Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I, Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that manufactures artificial explosives and fireworks, firearms, cartridges and ammunition.

No foreign national may appoint or be appointed a member of the board of directors or an officer of such an enterprise.

Phase-Out: None

Sector: Mining

Sub-Sector: Extraction and Exploitation of Minerals

Industry Classification: CMAP 210000 - Exploitation of Mineral Carbon

CMAP 231000 - Extraction of Minerals Containing Iron

CMAP 232001 - Extraction of Minerals Containing Gold, Silver and other Precious Minerals and Metals

CMAP 232002 - Extraction of Mercury and Antimony

CMAP 232003 - Extraction of Industrial Minerals Containing Lead and Zinc

CMAP 232004 - Extraction of Minerals Containing Copper

CMAP 232006 - Extraction of other Metallic Minerals not containing Iron

CMAP 291001 - Extraction of Sand and Gravel

CMAP 291002 - Extraction of Marble and other Gravels for Construction

CMAP 291003 - Exploitation of Feldspar

CMAP 291004 - Extraction of Kaolin, Clay and Refractory Minerals

CMAP 291005 - Extraction of Limestones

CMAP 291006 - Exploitation of Gypsum

CMAP 292001 - Extraction of Barium Oxide

CMAP 292002 - Extraction of Phosphoric Rock

CMAP 292003 - Extraction of Fluorite

CMAP 292004 - Extraction of Sulphur

CMAP 292005 - Extraction of other Minerals in order to Obtain Chemicals

CMAP 292006 - Extraction of Salt

CMAP 292007 - Extraction of aphite

CMAP 292008 - Extraction of other Non-Metallic Minerals

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley Minera, Capítulos I, II

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Minera

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I, Título IV; Título V; Título VIII; Título IX, Capítulo I

As qualified by the Description element

Description: Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the extraction or exploitation of any mineral.

Phase-Out: Subject to Schedule of Mexico, Annex I, page I-M-4, five years after the date of entry into force of this Agreement, investors of another Party or their investments may own 100 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in extraction or exploitation of any mineral, without the prior approval of the Comisión Nacional de Inversiones Extranjeras.

Sector: Printing, Editing and Associated Industries

Sub-Sector: Newspaper Publishing

Industry Classification: CMAP 342001 - Newspaper Publishing

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

As qualified by the Description element

Description: Investment

Investors of another Party or their investments may own, directly or indirectly, 100 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the simultaneous printing and distribution in the territory of Mexico of a daily newspaper that is published outside of the territory of Mexico.

Investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the printing or publication of daily newspapers written primarily for a Mexican audience and distributed in the territory of Mexico.

For purposes of this reservation, daily newspapers are those published at least five days a week.

Phase-Out: None

Sector: Professional, Technical and Specialized Services

Sub-Sector : Medical Doctors

Industry Classification: CMAP 9231 - Private Medical, Odontological and Veterinary Services (limited to medical and odontological services)

Type of Reservation: National Treatment (Article 1202)

Level of Government: Federal

Measures: Ley Federal del Trabajo, Capítulo I

Description: Cross-Border Services

Only Mexican nationals licensed as doctors in the territory of Mexico may provide in-house medical services in Mexican enterprises.

Phase-Out: None

Sector: Professional, Technical and Specialized Services

Sub-Sector : Specialized Personnel

Industry Classification: CMAP 951012 - Customs Brokers and Representation Agency Services (limited to shippers' export declarations)

Type of Reservation: National Treatment (Article 1202)

Level of Government: Federal

Measures: Ley Aduanera, Título IX, Capítulo Unico

Description: Cross-Border Services

A shipper's export declaration must be processed by a Mexican national licensed as a customs broker ("agente aduanal") or by a representative ("apoderado aduanal") employed by the exporter and authorized by the Secretaría de Hacienda y

Crédito Público for this purpose.

Phase-Out: None. Subject to discussion by the Parties five years after the date of entry into force of this Agreement.

Sector: Professional, Technical and Specialized Services

Sub-Sector : Professional Services

Industry Classification: CMAP 9510 - Professional, Technical and Specialized Services (limited to professional services)

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal and State

Measures: Ley Reglamentaria del Artículo 5o. Constitucional, Relativo al Ejercicio de las Profesiones en el Distrito Federal, Capítulo III, Sección Tercera, Capítulos IV, V

Ley General de Población,Título III, Capítulo III

Reglamento de la Ley Reglamentaria del Artículo 5o. Constitucional, relativo al Ejercicio de las Profesiones en el Distrito Federal, Capítulo III

Description: Cross-Border Services

Only Mexican nationals may be licensed in professions that require a professional license ("cédula profesional").

An "inmigrado" or an "inmigrante" may seek a judicial order to obtain such a license.

Phase-Out: Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3). On removal of these requirements, a foreign professional will be required to have an address in Mexico.

With respect to legal services, see Schedule of Mexico, Annex I, page I-M-46, Schedule of Mexico Annex II, page II-M-10, and Schedule of Mexico, Annex VI, page VI-M-2.

Sector: Professional, Technical and Specialized Services

Sub-Sector : Professional Services

Industry Classification: CMAP 951002 - Legal Services (including foreign legal consultancy)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205)

Level of Government: Federal

Measures: Ley Reglamentaria del Artículo 5o. Constitucional, Relativo al Ejercicio de las Profesiones en el Distrito Federal, Capítulo I, Capítulo III, Sección III

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Reglamentaria del Artículo 5o. Constitucional, relativo al Ejercicio de las Profesiones en el Distrito Federal, Capítulos I, II, V

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

As qualified by the Description element

Description: Cross Border Services and Investment

Except as provided for in this reservation, only lawyers licensed in Mexico may have an ownership interest in a law firm established in the territory of Mexico.

Lawyers licensed in a Canadian province that permits partnerships between those lawyers and lawyers licensed in Mexico will be permitted to form partnerships with lawyers licensed in Mexico.

The number of lawyers licensed in Canada serving as partners, and their ownership interest in the partnership, may not

exceed the number of lawyers licensed in Mexico serving as partners, and their ownership interest in the partnership. A lawyer licensed in Canada may not practice or advise on Mexican law.

A law firm established by a partnership of lawyers licensed in Canada and lawyers licensed in Mexico may hire lawyers licensed in Mexico as employees.

Lawyers licensed in Canada will be subject to Schedule of Mexico, Annex VI, page VI-M-2.

Lawyers licensed in the United States will be subject to Schedule of Mexico, Annex II, page II-M-10 and Schedule of Mexico, Annex VI, page VI-M-2.

Phase-Out: None

Sector: Professional, Technical and Specialized Services

Sub-Sector : Professional Services

Industry Classification: CMAP 951003 - Accounting and Auditing Services (limited to accounting services)

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Código Fiscal de la Federación, Título III

Reglamento del Código Fiscal de la Federación, Capítulo II

Description: Cross-Border Services

Only Mexican nationals who are licensed as accountants in Mexico are authorized to perform audits for tax purposes on behalf of:

(a) state enterprises;

(b) enterprises that are authorized to receive taxdeductible donations;

(c) enterprises with income, capital stock, number of employees and operations above levels specified annually by the Secretaría de Hacienda y Crédito Público; or

(d) enterprises undergoing a merger or divestiture.

Phase-Out: Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3). On removal of these requirements, a foreign professional will be required to have an address in Mexico.

Sector: Professional, Technical and Specialized Services

Sub-Sector : Specialized Services (Commercial Public Notaries)

Industrial Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Código de Comercio, Libro I, Título III

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y

Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título II, Capítulo I

Description: Cross-Border Services and Investment

1. Only a Mexican national by birth may be licensed to be a commercial public notary ("corredor público").

2. A commercial public notary may not have a business affiliation with any person for the provision of commercial public notary services.

Phase-Out: 1. Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3). On removal of these requirements, a foreign professional will be required to have an address in Mexico.

2. None

Sector: Professional, Technical and Specialized Services

Sub-Sector : Specialized Services

Industry Classification: CMAP 951001 - Public Notary

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal and State

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Leyes del Notariado para los Estados de: Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Distrito Federal, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán and Zacatecas.

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Cross-Border Services and Investment

Only Mexican nationals by birth may be granted a fiat ("patente") to be public notaries ("notarios públicos").

A public notary may not have a business affiliation with any person for the provision of public notary services.

Phase-Out: None

Sector: Professional, Technical and Specialized Services

Sub-Sector : Professional Services

Industry Classification: CMAP 951023 - Other Professional Services (limited to private veterinary services)

Type of Reservation: National Treatment (Article 1202)

Level of Government: Federal

Measures: Ley de Sanidad Fitopecuaria de los Estados Unidos Mexicanos, Título II, Capítulo IV

Reglamento de Control de Productos QuímicoFarmacéuticos, Biológicos, Alimenticios, Equipos y Servicios para Animales, Capítulos IV, V

Description: Cross-Border Services

For enterprises that manage chemical, pharmaceutical and biological goods for application to animals, only a Mexican national may be:

(a) a veterinarian responsible for management of such goods; or

(b) a licensed professional responsible for laboratories of such enterprises.

Phase-Out: Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3). On removal of these requirements, a foreign professional will be required to have an address in Mexico.

Sector: Retail Commerce

Sub-Sector : Sale of Non-Food Products in Specialized Establishments

Industry Classification: CMAP 623087 - Sale of Firearms, Cartridges and Ammunition

CMAP 612024 - Wholesale Commerce, Not Elsewhere Classified (limited to firearms, cartridges and ammunition)

Type of Reservation: National Treatment (Article 1102) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Ley Federal de Armas de Fuego y Explosivos, Título III, Capítulo I

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley Federal de Armas de Fuego y Explosivos, Capítulo IV

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico that sells firearms, cartridges and ammunition.

No foreign national may appoint or be appointed a member of the board of directors or managing officer of such an enterprise.

Phase-Out: None

Sector: Religious Services

Sub-Sector :

Industry Classification: CMAP 929001 - Religious Services

Type of Reservation: Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Ley de Asociaciones Religiosas y Culto Privado, Título II, Capítulos I, II

Description: Cross-Border Services

Religious associations must be associations constituted in accordance with the Ley de Asociaciones Religiosas y Cultos Privados.

Investment

Representatives of religious associations in Mexico must be Mexican nationals.

Phase-Out: None

Sector: Services to Agriculture

Sub-Sector :

Industry Classification: CMAP 971010 - Supply of Agricultural Services

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Sanidad Fitopecuaria de los Estados Unidos Mexicanos, Título II

Ley de Nacionalidad y Naturalización, Capítulo IV

Reglamento de la Ley de Sanidad Fitopecuaria de los Estados Unidos Mexicanos, Capítulo VII

Description: Cross-Border Services

A concession granted by the Secretaría de Agricultura y Recursos Hidráulicos is required to spray pesticides.

Only Mexican nationals or Mexican enterprises may obtain such a concession.

Phase-Out: Six years after the date of entry into force of this Agreement, the requirement of a concession will be replaced with a permit requirement and the citizenship requirement will be eliminated.

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: CMAP 713001 - Transportation Services on MexicanRegistered Aircraft

CMAP 713002 - Air Taxi Transportation Services

Type of Reservation: National Treatment (Article 1102) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Ley de Vías Generales de Comunicación, Libro IV, Capítulo I, X, XI

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

As qualified by the Description element

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 25 percent of the voting interest in an enterprise established or to be established in the territory of Mexico that provides commercial air services on Mexican-registered aircraft. The chairman and at least twothirds of the board of directors and twothirds of managing officers of such an enterprise must be Mexican nationals.

Only Mexican nationals and Mexican enterprises in which 75 percent of the voting interests is owned or controlled byMexican nationals and of which the chairman and at least two-thirds of the managing officers are Mexican nationals may register aircraft in Mexico.

Only Mexican-registered aircraft may provide the following commercial air transport services:

(a) "domestic services" (air services between points, or from and to the same point, in the territory of Mexico, or between a point in the territory of Mexico and a point not in the territory of another country) ;

(b) "scheduled international services" (scheduled air services between a point in the territory of Mexico and a point in the territory of another country) where those services have been reserved to Mexican carriers under existing or future bilateral agreements; and

(c) "non-scheduled international services" (non-scheduled air services between a point in the territory of Mexico and a point in the territory of another country) where those services have been reserved to Mexican carriers under existing or future bilateral agreements.

Phase-Out: None

Sector: Transportation

Sub-Sector: Specialty Air Services

Industrial Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro IV, Capítulo XII

As qualified by paragraphs 2, 3 and 4 of the Description element

Description: Cross-Border Services

1. A permit issued by the Secretaría de Comunicaciones y Transportes (SCT) is required to provide all specialty air services in the territory of Mexico.

2. A person of Canada or the United States may obtain such a permit to provide flight training, forest fire management, fire-fighting, glider towing, and parachute jumping services in Mexico, subject to compliance with Mexican safety requirements.

3. Such a permit may not be issued to a person of Canada or the United States to provide aerial advertising, aerial sightseeing, aerial construction, helilogging, inspection and surveillance, mapping, photography, surveying and aerial spraying services.

Investment

4. Investors of another Party or their investments may only own, directly or indirectly, up to 25 percent of the voting interest in an enterprise established or to be established in the territory of Mexico that provides specialty air services using Mexican-registered aircraft. The chairman and at least twothirds of the board of directors and two-thirds of managing officers of such an enterprise must be Mexican nationals. Only Mexican nationals and Mexican enterprises in which 75 percent of the voting interest is owned or controlled by Mexican nationals and of which the chairman and at least two-thirds of the managing officers are Mexican nationals may register aircraft in Mexico.

Phase-Out: Cross-Border Services

A person of Canada or the United States will be allowed to obtain a permit by SCT to provide, subject to compliance with Mexican safety requirements, the following specialty air services:

(a) three years after the date of entry into force of this Agreement, aerial advertising, aerial sightseeing services, aerial construction and heli-logging; and

(b) six years after the date of entry into force of this Agreement, inspection and surveillance, mapping, photography, surveying and aerial spraying services.

Investment

None

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: CMAP 384205 - Aircraft Building, Assembly and Repair (limited to aircraft repair)

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro IV, Capítulo XV

Ley de Nacionalidad y Naturalización, Capítulo IV

Reglamento de Talleres Aeronáuticos, Capítulo I

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to establish and operate, or operate, an aircraft repair facility. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Phase-Out: None

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: CMAP 973301 - Air Navigation Services

CMAP 973302 - Airport and Heliport Administration Services

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos,

Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro IV, Capítulo IX

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Ley de Nacionalidad y Naturalización, Capítulo IV

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, airports and heliports and to provide air navigation services. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the following activities:

(a) construction and operation of airports or heliports;

(b) operation of airports or heliports; or

(c) provision of air navigation services.

Phase-Out: None

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: CMAP 973101 - Bus and Truck Station Administration and Ancillary Services (main bus and truck terminals and bus and truck stations)

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Ley de Vías Generales de Comunicación, Libro I, Capítulo I, II, III; Libro II, Título II, Capítulos I, II; Título III, Capítulo Unico

Reglamento para el Aprovechamiento del Derecho de Vía de las Carreteras Federales y Zonas Aledañas, Capítulos II, IV

Reglamento del Servicio Público de Autotransporte Federal de Pasajeros, Capítulo III, IV

As qualified by paragraph 1 of the Description element

Description: Cross-Border Services

1. A permit issued by the Secretaría de Comunicaciones y Transportes is required to establish, or operate, a bus or truck station or terminal. Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may obtain such a permit.

Investment

2. Investors of another Party or their investments may not own, directly or indirectly, ownership interest in an enterprise established or to be established in the territory of Mexicoengaged in the establishment or operation of bus or truck stations or terminals.

Phase-Out: Cross-Border Services

Three years after the date of signature of this Agreement, such a permit may be obtained by Mexican nationals and Mexican enterprises.

Investment

With respect to an enterprise established or to be established in the territory of Mexico engaged in the establishment or operation of bus or truck station or terminals, investors of another Party or their investments may own, directly or indirectly:

(a) three years after the date of signature of this Agreement, only up to 49 percent of the ownership interest in the enterprise;

(b) seven years after the date of entry into force of this Agreement, only up to 51 percent of the ownership interest in the enterprise; and

(c) ten years after the date of entry into force of this Agreement, 100 percent of the ownership interest in the enterprise.

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: CMAP 711101 - Railway Transport Services (limited to railway crew)

Type of Reservation: National Treatment (Article 1202)

Level of Government: Federal

Measures: Ley Federal del Trabajo, Capítulo I

Description: Cross-Border Services

Railway crew members must be Mexican nationals.

Phase-Out: None

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: CMAP 973102 - Road and Bridge Administration Services and Ancillary Services

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro II, Título II, Capítulo II; Título III, Capítulo Unico

Ley de Nacionalidad y Naturalización, Capítulo IV

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to provide road and bridge administration services and ancillary services. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Phase-Out: None

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: CMAP 711312 - Urban and Suburban Passenger Transportation Service by Bus

CMAP 711315 - Collective Automobile Transportation Service

CMAP 711316 - Established Route Automobile Transportation Service

CMAP 711317 - Automobile Transportation Services from a Specific Station

CMAP 711318 - School and Tourist Transportation Services (limited to school transportation services)

Type of Reservation: National Treatment (Article 1102, 1202)

Level of Government: Federal

Measures: Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro II, Título II, Capítulo II

Ley de Nacionalidad y Naturalización, Capítulo IV

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Reglamento del Servicio Público de Autotransporte Federal de Pasajeros, Capítulo II

Description: Cross-Border Services and Investment

Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may provide local bus services, school bus services and taxi and other collective transportation services.

Phase-Out: None

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: CMAP 711201 - Road Transport Services for Construction Materials

CMAP 711202 - Road Transport Moving Services

CMAP 711203 - Other Services of Specialized Cargo Transportation

CMAP 711204 - General Trucking Services

CMAP 711311 - Inter-City Busing Services

CMAP 711318 - School and Tourist Transportation Services (limited to tourist transportation services)

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Memorandum de Entendimiento entre los Estados Unidos Mexicanos y los Estados Unidos de Norteamérica para la Promoción de Servicios de Transporte Turístico de Ruta Fija, 3 de diciembre de 1990

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro II, Título II, Capítulo II; Título III, Capítulo Unico

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

As qualified by paragraphs 1, 3 and 4 of the Description element.

Description: Cross-Border Services

1. A permit issued by the Secretaría de Comunicaciones y Transportes is required to provide inter-city bus services, tourist transportation services or truck services for the transportation of goods or passengers to or from the territory of Mexico.

2. Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may provide such services.

3. Notwithstanding paragraph 2, a person of Canada or the United States will be permitted to provide international charter or tour bus services to or from the territory of Mexico.

4. Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause, using Mexican-registered equipment

that is Mexican-built or legally imported and drivers who are Mexican nationals, may provide bus or truck services for the transportation of goods or passengers between points in the territory of Mexico.

Investment

5. Investors of another Party or their investments may not own directly or indirectly, an ownership interest in an enterprise established or to be established in the territory of Mexico engaged in bus or truck transportation services as set out in the Industry Classification element.

Phase-Out: Cross-Border Services

A person of Canada or of the United States will be permitted to provide:

(a) three years after the date of signature of this Agreement, Cross-Border truck services to or from the territory of border states (Baja California, Chihuahua, Coahuila,Nuevo León, Sonora and Tamaulipas), and such a person will be permitted to enter and depart Mexico through different ports of entry in such states;

(b) three years after the date of entry into force of this Agreement, Cross-Border scheduled bus services to or from the territory of Mexico; and

(c) six years after the date of entry into force of this Agreement, Cross-Border truck services to or from the territory of Mexico.

Three years after the date of signature of this Agreement, only Mexican nationals and Mexican enterprises, using Mexicanregistered equipment that is Mexican-built or legally imported and drivers who are Mexican nationals, may provide bus or truck services for the transportation of international cargo or passengers between points in the territory of Mexico. For domestic cargo, paragraph 4 of the Description element will continue to apply.

Investment

With respect to an enterprise established or to be established in the territory of Mexico providing inter-city bus services, tourist transportation services, or truck services for the transportation of international cargo between points in the territory of Mexico, investors of another Party or their investments may own, directly or indirectly:

(a) three years after the date of signature of this Agreement, only up to 49 percent of ownership interest in such an enterprise;

(b) seven years after the date of entry into force of this Agreement, only up to 51 percent of the ownership interest in such an enterprise; and

(c) ten years after the date of entry into force of this Agreement, 100 percent of the ownership interest in such an enterprise.

Investors of another Party or their investments may not own, directly or indirectly, an ownership interest in an enterprise providing truck services for the carriage of domestic cargo.

Sector: Transportation

Sub-Sector : Land Transportation and Water Transportation

Industry Classification: CMAP 501421 - Marine and River Works

CMAP 501422 - Construction of Roads for Land Transportation

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro II, Título II, Capítulo II; Libro III, Capítulos II, XV

Ley de Nacionalidad y Naturalización, Capítulo IV

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, marine or river works or roads for land transportation. Such a concession may be granted only to Mexican nationals and

Mexican enterprises.

Phase-Out: None

Sector: Transportation

Sub-Sector: Non-Energy Pipelines

Industrial Classification:

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III

Ley Federal de Aguas, Título I, Capítulo I

Ley de Nacionalidad y Naturalización, Capítulo IV

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, pipelines carrying goods other than energy or basic petrochemicals. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Phase-Out: None

Sector: Transportation

Sub-Sector : Specialized Personnel

Industry Classification: CMAP 951012 - Customs Brokers

Type of Reservation: National Treatment (Article 1102)

Level of Government:

Measures: Federal

Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley Aduanera, Título II, Capítulo Unico

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Investment

Investors of another Party or their investments may not own, directly or indirectly, an ownership interest in a customs broker enterprise ("agencia aduanal").

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: CMAP 1300 - Fishing

Type of Reservation: National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Pesca, Capítulos I, II

Ley de Navegación y Comercio Marítimos,

Libro II, Título Unico, Capítulo I

Ley de Nacionalidad y Naturalización, Capítulo IV

Reglamento de la Ley de Pesca, Capítulo I, III, IV, V, VI, IX, XV

Description: Cross-Border Services

A concession granted, or permit issued, by the Secretaría de Pesca is required to engage in fishing activities in "Mexican jurisdictional waters". Only Mexican nationals and Mexican enterprises, using Mexicanflagged vessels, may obtain such a concession or permit. Permits may exceptionally be issued to persons operating vessels flagged in a foreign country that provides equivalent treatment to Mexicanflagged vessels to engage in fishing activities in the Exclusive Economic Zone.

Only Mexican nationals and Mexican enterprises may obtain authorization from the Secretaría de Pesca for deep sea fishingon Mexicanflagged vessels, fixed rigging installations, recollection from the natural milieu of larvae, postlarvae, eggs, seeds or fingerlings, for research or aquaculture purposes, introduction of live species into "Mexican jurisdictional waters", and for educational fishing in accordance with the programs of fishing educational institutions.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: CMAP 384201 - Shipbuilding and Ship Repair

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205) Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro III, Capítulo XV

Ley para el Desarrollo de la Marina Mercante, Capítulo IV

Ley de Nacionalidad y Naturalización, Capítulo IV

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to establish and operate, or operate, a shipyard. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Cross-Border Services and Investment

For the owner of a Mexicanflagged vessel to be eligible for government cargo preferences, subsidies and tax benefits granted under the Ley para el Desarrollo de la Marina Mercante, that owner must carry out repair and maintenance operations in shipyards and repair facilities in the territory of Mexico.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: CMAP 712011 - International Maritime Transportation Services

CMAP 712012 - Cabotage Maritime Services

CMAP 712013 - International and Cabotage Towing Services

CMAP 712022 - Internal Port Water Transportation Services

CMAP 712021 - River and Lake Transportation Services

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II y III; Libro III, Capítulos I-XV

Ley para el Desarrollo de la Marina Mercante, Capítulos I, III

Ley de Navegación y Comercio Marítimos, Libro II, Título Unico, Capítulos I, III

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Description: Cross-Border Services and Investment

Maritime cabotage services, including off-shore maritime services, are reserved to Mexican-flagged vessels. A waiver may be granted by the Secretaría de Comunicaciones y Transportes where Mexicanflagged vessels are not able to provide such services. Only Mexican-flagged vessels may transport cargo owned by the Federal Government.

Foreign flagged vessels may provide international maritime services in the territory of Mexico on the basis of reciprocity with the relevant country. Only Mexicanflagged towing vessels may provide towing services from Mexican ports to foreign ports. Where such towing vessels are not able to provide such services, the Secretaría de Comunicaciones y Transportes may provide permits to foreign-flagged towing vessels. Only a Mexican national or a Mexican enterprise with a foreigners' exclusion clause may own vessels registered and flagged as Mexican. All members of the board of directors and managers of such enterprise must be Mexican nationals.

Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than the 49 percent of the ownership interest in an enterprise established or to be established in the territory of Mexico operating foreign-flagged vessels providing international maritime transport services.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: CMAP 973203 - Maritime and Inland (Lake and Rivers) Ports Administration

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Ley de Navegación y Comercio Marítimos, Libro II, Capítulo II

Ley de Vías Generales de Comunicación, Libro III, Capítulo XI

Description: Cross-Border Services

All port workers must be Mexican nationals.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: CMAP 973201 - Loading and Unloading Services Related to Water Transportation (includes operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling; operation and

maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharves; waterfront terminal operations)

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Ley de Navegación y Comercio Marítimos, Libro I, Título Unico, Capítulo I; Libro II, Título II

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Capítulos I, II, III, V, VI

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro III, Capítulo II

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, Título I; Título II, Capítulo I; Título IV; Título V; Título VIII, Capítulos I, II, III, V; Título IX, Capítulo I

Reglamento del Servicio de Maniobras en las Zonas Federales de Puertos, Libro I, Título Unico, Capítulo I; Libro II, Título Unico, Capítulo II, Sección A; Libro IV, Título Unico

Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre yTerrenos Ganados al Mar, Capítulo II, Sección II

As qualified by the Description element

Description: Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest in an enterprise, established or to be established in the territory of Mexico providing to third persons the following services: operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling; operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharves; and waterfront terminal operations.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: CMAP 973201 - Loading and Unloading Services Related to Water Transportation (includes operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling; operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharves; waterfront terminal operations)

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Navegación y Comercio Marítimos, Libro I, Título Unico, Capítulo I; Libro II, Título II

Ley de Vías Generales de Comunicación, Libro I, Capítulos I, II, III; Libro III, Capítulo II

Ley de Nacionalidad y Naturalización, Capítulo IV

Reglamento del Servicio de Maniobras en las Zonas Federales de Puertos, Libro I, Título Unico, Capítulo I, Libro II, Título Unico, Capítulo II, Sección A; Libro IV, Título Unico

Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar, Capítulo II, Sección II

Description: Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, maritime and inland port terminals, including docks, cranes and related facilities. Only Mexican nationals and Mexican enterprises may obtain such a concession.

A permit issued by the Secretaría de Comunicaciones y Transportes is required to provide stevedoring and warehousing services. Only Mexican nationals and Mexican enterprises may obtain such a permit.

Phase-Out: None

Annex I. Schedule of the United States

Sector: Energy

Sub-Sector: Atomic Energy

Industry Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.

Description: Investment

A license is required for any person in the United States to transfer, manufacture, produce, use or import any facilities that produce or use nuclear materials. Such a license may not be issued to any entity known or believed to be owned, controlled or dominated by an alien, a foreign corporation or a foreign government (42 U.S.C. §§ 2133, 2134). The issuance of a license is also prohibited for "production or utilization facilities" for such uses as medical therapy or research and development activities to any corporation or other entity owned, controlled or dominated by one of the foreign persons described above (42 U.S.C. § 2134(d)).

Phase-Out: None

Sector: Business Services

Sub-Sector: Export Intermediaries

Industry Classification: SIC 7389 Business Services, Not Elsewhere Classified

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Export Trading Company Act of 1982, 15 U.S.C. §§ 4011-4021

15 C.F.R. Part 325

Description: Cross-Border Services

Title III of the Export Trading Company Act of 1982 authorizes the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a "person" as defined by the Act can apply for a certificate of review. "Person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or non-profit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons."

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or non-profit organization or relationship, by contract or other arrangement."

Phase-Out: None

Sector: Business Services

Sub-Sector: Export Intermediaries

Industry Classification: SIC 7389 Business Services, Not Elsewhere Classified

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: Export Administration Act of 1979, Pub. L. 9672, as amended

Export Administration Regulations, 15 C.F.R. Parts 768 through 799

Description: Cross-Border Services

With some limited exceptions, the export from the United States of all commodities, and all technical data, requires either a general license or a validated license or other authorization granted by the Office of Export Licensing, U.S. Department of Commerce. A general license requires no application or documentation and is generally available for use by all persons.

An application for a validated license may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by his duly authorized agent. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

Phase-Out: None

Sector: Communications

Sub-Sector: Telecommunications (Enhanced or Value-Added Services)

Industry Classification: CPC 7523

CPC 75299 Data and Message Transmission Services

Other Telecommunications Services Not Elsewhere Classified (limited to enhanced or valueadded services)

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

Measures: F.C.C. Decision, International Communications Policies Governing Designation of Recognized Private Operating Agencies, 104 F.C.C. 2d 208, n. 123, n. 126 (1986) 47 C.F.R. 64.702 (definition of enhanced or valueadded services)

Description: Investment

If a U.S.-based foreign-owned enhanced service provider obtains voluntary Recognized Private Operating Agency certification from the U.S. Department of State for purposes of negotiating operating agreements with governments other than the U.S. Government, it must submit copies of all operating agreements granted to it by foreign governments and evidence of any refusal of a foreign government to grant it an operating agreement. For purposes of this rule, a service provider is generally considered to be "foreign owned" if 20 percent or more of its stock is owned by persons who are not U.S. citizens.

Phase-Out: None

Sector: Manufacturing

Sub-Sector: Agricultural Chemicals

Industry Classification: SIC 2879 Pesticides and Agricultural Chemicals, Not Elsewhere Classified

Type of Reservation: National Treatment (Article 1102)

Measures: Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

Description: Investment

The Administrator of the Environmental Protection Agency may not knowingly disclose information submitted by an applicant or registrant under the Federal Insecticide, Fungicide, and Rodenticide Act, without consent, to any foreign or

multinational business or entity, or any employee or agent of such business or entity, engaged in the production, sale or distribution of pesticides in countries other than the United States or to any person who intends to deliver such data to that business, entity, employee or agent (7 U.S.C. § 136h(g)).

Phase-Out: None

Sector: Mining

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Level of Government: Federal

Measures: Mineral Lands Leasing Act of 1920, 30 U.S.C. Chapter 3A

43 C.F.R. § 3102

43 C.F.R. § 2882.2-1

10 U.S.C. § 7435

Description: Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on onshore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).

Nationalization is not considered to be denial of similar or like privileges.

Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).

Phase-Out: None

Sector: Professional Services

Sub-Sector: Patent Attorneys and Patent Agents and other Practice before the Patent and Trademark Office

Industry Classification: SIC 7389

SIC 8111 Business Services, Not Elsewhere Classified

Legal Services

Type of Reservation: National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Level of Government: Federal

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):

(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a));

(b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States or a non-resident who is registered to

practice in a country that permits patent agents registered to practice before the USPTO to practice in that country (37 C.F.R. § 10.6(c)); and

(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country (37 C.F.R. § 10.14(a)-(c)).

Phase-Out: Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3).

Sector: Public Administration

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Level of Government: Federal

Measures: 22 U.S.C. §§ 2194(a) and (b) and 2198(c)

Description: Investment

The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises or foreigncontrolled domestic enterprises.

Phase-Out: None

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 3721

SIC 4581 Aircraft Repair and Rebuilding on a Factory Basis

Aircraft Repair (Except on a Factory Basis)

Type of Reservation: Most-Favored-Nation Treatment (Article 1203)

Level of Government: Federal

Measures: 49 U.S.C. §§ 1354, 1421-1430

14 C.F.R. §§ 43 and 145

Agreement Concerning Airworthiness Certification, Exchange of Letters between the United States and Canada dated August 31, 1984, TIAS 11023, as amended

Description: Cross-Border Services

For aircraft repair, overhaul or maintenance activities performed outside the territory of the United States, during which an aircraft is withdrawn from service, U.S. measures require that, in order to perform work on U.S.-registered aircraft, foreign air repair stations must be certified by the Federal Aviation Administration with continuing oversight provided by the Federal Aviation Administration.

Pursuant to an airworthiness agreement between the United States and Canada, the United States recognizes the certifications and oversight provided by Canada for all repair and maintenance facilities and individuals performing the work located in Canada.

Phase-Out: None

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 4512

SIC 4513

SIC 4522 Air Transportation Scheduled

Air Courier Services

Air Transportation Non-scheduled

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Federal Aviation Act of 1958, 49 U.S.C. App. Ch. 20

Description: Investment

Only air carriers that are "citizens of the United States" may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.

U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under the Federal Aviation Act of 1958, a "citizen of the United States" means:

(a) an individual who is a U.S. citizen;

(b) a partnership in which each member is a U.S. citizen; or

(c) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, and at least 75 percent of the voting interest in the corporation is owned or controlled by U.S. citizens (49 App. U.S.C. § 1301(16)).

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a casebycase basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

Phase-Out: None

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 0721 Crop Planting, Cultivating, and Protecting (limited to aerial dusting and spraying, dusting crops, with or without fertilizing, spraying crops, with or without fertilizing)

SIC 0851 Forestry Services (limited to aerial fire fighting)

SIC 4522 Air Transportation, Non-scheduled (limited to air taxi services, sightseeing airplane services)

SIC 7319 Advertising, Not Elsewhere Classified (limited to aerial advertising, sky writing)

SIC 7335 Commercial Photography (limited to aerial photographic service, except mapmaking)

SIC 7389 Business Services, Not Elsewhere Classified (limited to mapmaking, including aerial; pipeline and powerline inspection services; and firefighting service, other than forestry)

SIC 7997 Membership Sports & Recreation Clubs (limited to aviation clubs, membership)

SIC 8299 Schools & Education Services, Not Elsewhere Classified (limited to flying instruction)

SIC 8713 Surveying Services (limited to aerial surveying)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Level of Government: Federal

Measures: Federal Aviation Act of 1958, 49 U.S.C. App. Ch. 20

14 C.F.R. § 375

As qualified by paragraph 2 of the Description element

Description: Cross-Border Services

Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States. A person of Canada or Mexico that provides aerial construction, helilogging, aerial sightseeing, flight training, aerial inspection and surveillance and aerial spraying services may not be authorized to provide those services if there is inadequate reciprocity on the part of the country of the applicant, or if approval would otherwise not be in the public interest.

A person of Mexico or Canada may obtain such authorization to provide, subject to compliance by that person with U.S. safety regulations, aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing and parachute jumping.

Investment

"Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled or operated by persons who are not citizens or permanent residents of the Unites States (14 C.F.R. 375.1). Under the Federal Aviation Act of 1958, a "citizen of the United States" means:

(a) an individual who is a U.S. citizen;

(b) a partnership in which each member is a U.S. citizen; or

(c) a U.S. corporation of which the president and at least twothirds of the board of directors and other managing officers are U.S. citizens, and at least seventyfive percent of the voting interest in the corporation is owned or controlled by U.S. citizens (49 U.S.C. App. 1301(16)).

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a casebycase basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91141, January 23, 1991.

Phase-Out: Cross-Border Services

A person of Canada or Mexico will be permitted to obtain, subject to compliance with U.S. safety requirements, authorization to provide the following specialty air services in the territory of the United States:

(a) two years after the date of entry into force of this Agreement, aerial construction and helilogging;

(b) three years after the date of entry into force of this Agreement, aerial sightseeing, flight training and aerial inspection and surveillance services; and

(c) six years after the date of entry into force of this Agreement, aerial spraying services.

Investment

Phase-Out: None

Sector: Transportation

Sub-Sector: Land Transportation

Industry Classification: SIC 4213

SIC 4215

SIC 4131

SIC 4142

SIC 4151 Trucking, Except Local

Courier Services, Except by Air

Intercity and Rural Bus Transportation

Bus Charter Service, Except Local

School Buses (limited to interstate transportation not related to school activity)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205)

Level of Government: Federal

Measures: 49 U.S.C. § 10922(l)(1) and (2)

49 U.S.C. § 10530(3)

49 U.S.C. §§ 10329, 10330 and 11705

19 U.S.C. § 1202

49 C.F.R. § 1044

Memorandum of Understanding Between the United States of America and the United Mexican States on Facilitation of Charter/Tour Bus Service, December 3, 1990

As qualified by paragraph 2 of the Description element

Description: Cross-Border Services

Operating authority from the Interstate Commerce Commission (ICC) is required to provide interstate or Cross-Border bus or truck services in the territory of the United States. A moratorium remains in place on new grants of operating authority for persons of Mexico.

The moratorium does not apply to the provision of Cross-Border charter or tour bus services.

Under the moratorium, persons of Mexico without operating authority may operate only within ICC Border Commercial Zones, for which ICC operating authority is not required. Persons of Mexico providing truck services, including for hire, private, and exempt services, without operating authority are required to obtain a certificate of registration from the ICC to enter the United States and operate to or from the ICC Border Commercial Zones. Persons of Mexico providing bus services are not required to obtain an ICC certificate of registration to provide these services to or from the ICC Border Commercial Zones.

Only persons of the United States, using U.S.registered and either U.S.built or dutypaid trucks or buses, may provide truck or bus service between points in the territory of the United States.

Investment

The moratorium has the effect of being an investment restriction because enterprises of the United States providing bus or truck services that are owned or controlled by persons of Mexico may not obtain ICC operating authority.

Phase-Out: Cross-Border Services

A person of Mexico will be permitted to obtain operating authority to provide:

(a) three years after the date of signature of this Agreement, Cross-Border truck services to or from border states (California, Arizona, New Mexico and Texas), and such persons will be permitted to enter and depart the territory of United States through different ports of entry;

(b) three years after the date of entry into force of this Agreement, Cross-Border scheduled bus services; and

(c) six years after the date of entry into force of this Agreement, Cross-Border truck services.

Phase-Out: Investment

A person of Mexico will be permitted to establish an enterprise in the United States to provide:

(a) three years after the date of signature of this Agreement, truck services for the transportation of international cargo between points in the United States; and

(b) seven years after the date of entry into force of this Agreement, bus services between points in the United States.

The moratorium will remain in place on grants of authority for the provision of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo.

Sector: Transportation Services

Sub-Sector: Customs Brokers

Industry Classification: SIC 4731 Arrangement of Transportation of Freight and Cargo

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205)

Level of Government: Federal

Measures: 19 U.S.C. § 1641(b)

Description: Cross-Border Services and Investment

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

Phase-Out: None. Subject to discussion by the Parties five years after the date of entry into force.

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Level of Government: Federal

Measures: Securities Act of 1933, 15 U.S.C. §:§ 77C(b), 77f, 77g, 77h, 77j and 77s(a)

17 C.F.R. §§ 230.251 and 230.405

Securities Exchange Act of 1934, 15 U.S.C. §§ 78l, 78m, 78o(d) and 78w(a) 17 C.F.R. § 240.12b-2

Description: Investment

Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register securities that the firms issue or qualify to use the less costly standards under the rules.

Phase-Out: None

Sector: Waste Management

Sub-Sector:

Industry Classification: SIC 4952 Sewerage System

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: Clean Water Act, 33 U.S.C. §§ 1251 et seq.

Description: Investment

The Clean Water Act authorizes grants for the construction of treatment plants for municipal sewage or industrial waste. Grant recipients may be privately owned enterprises. The Act provides that grants shall be made for treatment works only if such articles, materials and supplies as have been manufactured, mined or produced in the United States will be used in the treatment works. The Administrator of the Environmental Protection Agency has authority not to apply this provision, for example, if the cost of the articles in question is unreasonable (33 U.S.C. § 1295).

Phase-Out: None

Annex II. Reservations for Future Measures (Chapters 11, 12, and 14)

1. The Schedule of a Party sets out, pursuant to Articles 1108(3) (Investment) and 1206(3) (Cross-Border Trade in Services), the reservations taken by that Party with respect to specific sectors, subsectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 1102 or 1202 (National Treatment);

(b) Article 1103 or 1203 (Most-Favored-Nation Treatment);

(c) Article 1205 (Local Presence);

(d) Article 1106 (Performance Requirements); or

(e) Article 1107 (Senior Management and Boards of Directors).

2. Each reservation sets out the following elements:

(a) Sector refers to the general sector in which the reservation is taken;

(b) Sub-Sector refers to the specific sector in which the reservation is taken;

(c) Industry Classification refers, where applicable, to the activity covered by the reservation according to domestic industry classification codes;

(d) Type of Reservation specifies the obligation referred to in paragraph 1 for which a reservation is taken;

(e) Description sets out the scope of the sector, sub-sector or activities covered by the reservation; and

(f) Existing Measures identifies, for transparency purposes, existing measures that apply to the sector, subsector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. The Description element shall prevail over all other elements.

4. For purposes of this Annex:

CMAP means Clasificación Mexicana de Actividades y Productos (CMAP) numbers as set out in Instituto Nacional de Estadística, Geografía e Informática, Clasificación Mexicana de Actividades y Productos, 1988;

CPC means Central Product Classification (CPC) numbers as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 77, Provisional Central Product Classification, 1991; and

SIC means:

(a) with respect to Canada, Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980; and

(b) with respect to the United States, Standard Industrial Classification (SIC) numbers as set out in the United States Office of Management and Budget, Standard Industrial Classification Manual, 1987.

Annex II. Schedule of Canada

Sector: Aboriginal Affairs

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure denying investors of another Party and their investments, or service providers of another Party, any rights or preferences provided to aboriginal peoples.

Existing Measures: Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 1102)

Description: Investment

Canada reserves the right to adopt or maintain any measure relating to residency requirements for the ownership by investors of another Party, or their investments, of ocean-front land.

Existing Measures:

Sector: Communications

Sub-Sector: Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

Industry Classification: CPC 752 Telecommunications Services

CPC 7543 Connection Services

CPC 7549 Other Telecommunications Services Not Elsewhere Classified (limited to telecommunications transport networks and services)

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103) Senior Management and Boards of Directors (Article 1107)

Description: Investment

Canada reserves the right to adopt or maintain any measure relating to investment in telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables, including ownership restrictions and measures concerning corporate officers and directors and place of incorporation.

This reservation does not apply to providers of enhanced or valueadded services whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

Existing Measures: Bell Canada Act, S.C. 1987, c. 19

British Columbia Telephone Company Special Act, S.C. 1916, c. 66

Teleglobe Canada Reorganization and Divestiture Act, S.C. 1987, c. 12

Telesat Canada Reorganization and Divestiture Act, S.C 1991, c. 52

Radiocommunication Act, R.S.C. 1985, c. R-2

Telegraphs Act, R.S.C. 1985, c. T-5

Telecommunications Policy Framework, 1987

Sector: Communications

Sub-Sector: Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

Industry Classification: CPC 752 Telecommunications Services (not including enhanced or value-added services)

CPC 7543 Connection Services

CPC 7549 Other Telecommunications Services Not Elsewhere Classified (limited to telecommunications transport networks and services)

Type of Reservation: National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Description: Cross-Border Services

Canada reserves the right to adopt or maintain any measure relating to radiocommunications, submarine cables and the provision of telecommunications transport networks and telecommunications transport services. These measures may apply to such matters as market entry, spectrum assignment, tariffs, intercarrier agreements, terms and conditions of service, interconnection between networks and services, and routing requirements that impede the provision on a cross-border basis of telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables.

Telecommunications transport services typically involve the realtime transmission of customersupplied information between two or more points without any endtoend change in the form or content of the customer's information, whether or not such services are offered to the public generally. These services include voice and data services by wire, radiocommunications or any other electromagnetic means of transmission.

This reservation does not apply to measures relating to the crossborder provision of enhanced or valueadded services.

Existing Measures: Bell Canada Act, S.C. 1987, c. 19

British Columbia Telephone Company Special Act, S.C. 1916, c. 66

Railway Act, R.S.C. 1985, c. R-3

Radiocommunication Act, R.S.C. 1985, c. R-2

Telegraphs Act, R.S.C. 1985, c. T-5

Telecommunications Policy Framework, 1987

Telecommunications Decisions, C.R.T.C., including (85-19), (90-3), (91-10), (91-21), (92-11) and (92-12)

Sector: Government Finance

Sub-Sector: Securities

Industry Classification: SIC 8152 Finance and Economic Administration

Type of Reservation: National Treatment (Article 1102)

Description: Investment

Canada reserves the right to adopt or maintain any measure relating to the acquisition, sale or other disposition by nationals of another Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government.

Existing Measures: Financial Administration Act, R.S.C. 1985, c. F-11

Sector: Minority Affairs

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

Existing Measures:

Sector: Social Services

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

Sector: Transportation

Sub-Sector: Air Transportation

Industry Classification: SIC 4513 Non-Scheduled Air Transport, Specialty, Industry

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103) Senior Management and Boards of Directors (Article 1107)

Description: Investment

Canada reserves the right to adopt or maintain any measure that restricts the acquisition or establishment of an investment in Canada for the provision of specialty air services to a Canadian national or a corporation incorporated and having its principal place of business in Canada, its chief executive officer and not fewer than twothirds of its directors as Canadian nationals, and not less than 75 percent of its voting interest owned and controlled by persons otherwise meeting these requirements.

Existing Measures: Aeronautics Act, R.S.C. 1985, c. A-2

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90-591

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4129 Other Heavy Construction (limited to dredging)

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4552 Harbour and Port Operation Industries (limited to berthing, bunkering and other vessel operations in a port)

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport (not including landside aspects of port activities)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure relating to investment in or provision of maritime cabotage services, including:

(a) the transportation of goods or passengers by vessel between points in the territory of Canada and in its Exclusive Economic Zone;

(b) with respect to waters above the continental shelf, the transportation of goods or passengers in relation to the exploration, exploitation or transportation of the mineral or non living natural resources of the continental shelf; and

(c) the engaging by vessel in any maritime activity of a commercial nature in the territory of Canada and in its Exclusive Economic Zone and, with respect to waters above the continental shelf, in such other maritime activities of a commercial nature in relation to the exploration, exploitation or transportation of mineral or nonliving natural resources of the continental shelf.

This reservation relates to, among other things, local presence requirements for service providers entitled to participate in these activities, criteria for the issuance of a temporary cabotage license to foreign vessels and limits on the number of cabotage licenses issued to foreign vessels.

Existing Measures: Coasting Trade Act, S.C. 1992, c. 31

Canada Shipping Act, R.S.C. 1985, c. S-9

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs and Excise Offshore Application Act, R.S.C. 1985, c. C-53

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4551 Marine Cargo Handling Industry

SIC 4552 Harbour and Port Operation Industries

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure denying service providers or investors of the United States, or their investments, the benefits accorded service providers or investors of Mexico or any other country, or their investments, in sectors or activities equivalent to those subject to Schedule of the United States, Annex II, page II-U-9.

Existing Measures:

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 4541Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4551 Marine Cargo Handling Industry

SIC 4552 Harbour and Port Operation Industries

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport

Type of Reservation: Most-Favored-Nation Treatment (Article 1203)

Description: Cross-Border Services

Canada reserves the right to adopt or maintain any measure relating to the implementation of agreements, arrangements and other formal or informal undertakings with other countries with respect to maritime activities in waters of mutual interest in such areas as pollution control (including double hull requirements for oil tankers), safe navigation, barge inspection standards, water quality, pilotage, salvage, drug abuse control and maritime communications.

Existing Measures: United States Wreckers Act, R.S.C. 1985, c. U-3

Various agreements and arrangements, including:

(a) Memorandum of Arrangements on Great Lakes Pilotage;

(b) Canada-United States Joint Marine Pollution Contingency Plan;

(c) Agreement with the United States on Loran "C" Service on the East and West Coasts; and

(d) Denmark-Canada Joint Marine Pollution Circumpolar Agreement.

Annex II. Schedule of Mexico

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202)

Description: Cross-Border and Investment

Mexico reserves the right to adopt or maintain any measure restricting the acquisition, sale or other disposition of bonds, treasury bills or any other kind of debt security issued by the federal, state or local governments, except with respect to ownership by "a financial institution of another Party", as defined in Chapter Fourteen (Financial Services).

Existing Measures:

Sector: Communications

Sub-Sector: Entertainment Services (Broadcasting and Multipoint Distribution Systems (MDS))

Industry Classification: CMAP 941104 Private Production and Transmission of Radio Programs (limited to transmission of radio programs, MDS and uninterrupted music)

CMAP 941105 Private Services of Production, Transmission and Retransmission of Television Programming (limited to transmission and retransmission of television programs, MDS, and high-definition television)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, broadcasting, multipoint distribution systems, uninterrupted music and high-definition television services. This reservation does not apply to measures relating to the production, sale or licensing of radio or television programming.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación

Ley Federal de Radio y Televisión

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera

Sector: Communications

Sub-Sector: Telecommunications

Industry Classification: CMAP 720006 Other Telecommunications Services (limited to aeronautical mobile and fixed services)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205)

Description: Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, air traffic control, aeronautical meteorology, aeronautical telecommunications, and other telecommunications services relating to air navigation services.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera

Decreto que Crea el Organismo Desconcentrado "Servicios a la Navegación en el Espacio Aéreo Mexicano" (SENEAM), 3 de octubre de 1978

Sector: Communications

Sub-Sector: Telecommunications Transport Networks

Industry Classification: CMAP 720003 Telephone Services

CMAP 720004 Telephone Booth Services

CMAP 720006 Other Telecommunications Services (not including enhanced or value-added services)

CMAP 502003 Telecommunications Installations

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205)

Description: Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, telecommunications transport networks and telecommunications transport services. Telecommunications transport networks include the facilities to provide telecommunications transport services such as local basic telephone services, long-distance telephone services (national and international), rural telephone services, cellular telephone services, telephone booth services, satellite services, trunking, paging, mobile telephony, maritime telecommunications services, air telephone, telex, and data transmission services.

Telecommunications transport services typically involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, whether or not such services are offered to the public generally.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Ley de Vías Generales de Comunicación

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera

Reglamento de Telecomunicaciones

Sector: Communications and Transportation

Sub-Sector: Postal Services, Telecommunications and Railroads

Industry Classification: CMAP 720001 Postal Services

CMAP 720005 Telegraph Services, Radiotelegraph Services, Wireless Telegraphy

CMAP 720006 Other Telecommunications Services (limited to satellite communications)

CMAP 711101 Railway Transportation Services (limited to operation, administration and control of traffic within the Mexican railway system, supervision and management of railway rights-of-way, construction, operation, and maintenance of basic railway infrastructure)

Type of Reservation: National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Description: Cross-Border Services

Mexico reserves the right to adopt or maintain any measure related to the provision of postal services (operation, administration and organization of first class mail), telegraph services, radiotelegraphy services, satellite communications services (establishment, ownership and operation of satellite systems, and establishment, ownership and operation of earth stations with international links), and railroad services (operation, administration and control of traffic within the Mexican railway system, supervision and management of railway rights-of-way, construction, operation, and maintenance of basic railway infrastructure).

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 28

Ley de Vías Generales de Comunicación

Ley Orgánica de Ferrocarriles Nacionales de México

Ley del Servicio Postal Mexicano

Sector: Energy

Sub-Sector: Petroleum and Other Hydrocarbons

Basic Petrochemicals

Electricity

Nuclear Power

Treatment of Radioactive Minerals

Industry Classification:

Type of Reservation: National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Description: Cross-Border Services Subject to Annex 602.3, Mexico reserves the right to adopt or maintain any measure related to services associated with energy and basic petrochemical goods.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículos 27, 28

Ley Reglamentaria del Artículo 27 Constitucional en Materia Nuclear

Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo y sus reglamentos

Ley Orgánica de Petróleos Mexicanos y Organismos Subsidiarios

Sector: Minority Affairs

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 1202) Local Presence (Article 1205)

Description: Cross-Border Services

Mexico reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged groups.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 4

Sector: Professional, Technical and Specialized Services

Sub-Sector: Professional Services

Industry Classification: CMAP 951002 Legal Services (including foreign legal consultancy)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Subject to Schedule of Mexico, Annex VI, page VI-M-2, Mexico reserves the right to adopt or maintain any measure relating to the provision of legal services and foreign legal consultancy services by persons of the United States.

Existing Measures: Ley Reglamentaria del Artículo 5o Constitucional, relativo al ejercicio de las profesiones en el Distrito Federal

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera

Sector: Social Services

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículos 4, 17, 18, 25, 26, 28, 123

Sector: Transportation

Sub-Sector: Specialized Personnel

Industry Classification: CMAP 951023 Other Specialized Services (limited to ship captains (capitanes); aircraft pilots (pilotos); ship masters (patrones); ship machinists (maquinistas); ship mechanics (mecánicos); airport administrators (comandantes de aeródromos); harbor masters (capitanes de puerto); harbor pilots (pilotos de puerto); customs brokers (agentes aduanales); crew on Mexican flagged vessels or aircraft (personal que tripule cualquier embarcación o aeronave con bandera o insignia mercante mexicana))

Type of Reservation: National Treatment (Article 1202)

Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)

Description: Cross-Border Services

Only Mexican nationals by birth may serve as:

(a) captains, pilots, ship masters, machinists, mechanics and crew members manning vessels or aircraft under the Mexican flag;

(b) harbor pilots, harbor masters and airport administrators; and

(c) customs brokers.

Existing Measures: Constitución Política de los Estados Unidos Mexicanos, Artículo 32

Annex II. Schedule of United States

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Description: Investment

The United States reserves the right to adopt or maintain any measure relating to residency requirements for the ownership by investors of Canada, or their investments, of oceanfront land.

Existing Measures:

Sector: Communications

Sub-Sector: Cable Television

Industry Classification: CPC 753 Radio and Television Cable Services

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Description: Investment

Subject to Article 2106, the United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country.

Existing Measures:

Sector: Communications

Sub-Sector: Telecommunications Transport Networks and Services and Radiocommunications

Industry Classification: CPC 752 Telecommunications Services (not including enhanced or valueadded services)

CPC 7543 Connection Services

CPC 7549 Other Telecommunications Services Not Elsewhere Classified (limited to telecommunications transport networks and services)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to investment in, or the provision of, telecommunications transport networks, telecommunications transport services or radiocommunications. These measures may apply to such matters as market entry, spectrum assignment, tariffs, intercarrier agreements, terms and conditions of service, and interconnection between networks and services. Telecommunications transport services typically involve the realtime transmission of customersupplied information between two or more points without endtoend change in the form or content of the customer's information, whether or not such services are offered to the public generally.

These services include voice and data services provided by any electromagnetic means. Radiocommunications include all communications by radio, including broadcasting. This reservation does not apply to measures relating to enhanced or

valueadded services or to the production, sale or licensing of radio or television programming.

Existing Measures: Communications Act of 1934, 47 U.S.C. §§ 151 et seq., see particularly §§ 310(a), (b) (radio licenses for common carrier, aeronautical en route, aeronautical fixed, and broadcasting services)

F.C.C. Decision, International Competitive Carrier, 102 F.C.C. 2d 812 (1985), as modified in Regulation of International Common Carrier Services, CC Docket No. 91-360, FCC 92-463 (released November 6, 1992)

Submarine Cable Landing Act, 47 U.S.C. § 34-9, see particularly § 35 (undersea cables)

Communications Satellite Act of 1962, 47 U.S.C. §§ 701-57

Telegraph Act, 47 U.S.C. § 17 (telegraph cables serving Alaska)

Children's Television Act of 1990, 47 U.S.C. § 303a

Television Program Improvement Act of 1990, 47 U.S.C. § 303c

Sector: Social Services

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

Sector: Minority Affairs

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 1102, 1202) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act.

Existing Measures: Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 et seq.

Sector: Professional Services

Sub-Sector: Legal Services

Industry Classification: SIC 8111 Legal Services

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

Subject to Schedule of the United States, Annex VI, page VIU2, the United States reserves the right to adopt or maintain any measure relating to the provision of legal services, including foreign legal consultancy services, by persons of Mexico.

Existing Measures:

Sector: Publishing

Sub-Sector: Newspaper Publishing

Industry Classification: SIC 2711 Newspapers: Publishing, or Publishing and Printing

Type of Reservation: National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)

Description: Investment

Subject to Article 2106, the United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the publication of daily newspapers primarily written for audiences and distributed in that country.

For purposes of this reservation, daily newspapers are newspapers published at least five days each week.

Existing Measures:

Sector: Transportation

Sub-Sector: Water Transportation

Industry Classification: SIC 091 Commercial Fishing (limited to fishing vessels and fishing operations within the Exclusive Economic Zone)

SIC 1629 Heavy Construction, Not Elsewhere Classified (limited to marine dredging)

SIC 4412 Deep Sea Foreign Transportation of Freight (limited to promotional programs for U.S.flagged vessels)

SIC 4424 Deep Sea Domestic Transportation of Freight (includes coastwise transportation of freight, deep sea domestic freight transportation, intercoastal transportation of freight, water transportation of freight to non-contiguous territories)

SIC 4432 Freight Transportation on the Great Lakes and St. Lawrence Seaway

SIC 4449 Water Transportation of Freight, Not Elsewhere Classified (includes canal barge operations, canal freight transportation, intracoastal freight transportation, lake freight transportation except on the Great Lakes, log rafting and towing, river freight transportation except on the St. Lawrence Seaway, transportation of freight on bays and sounds of the oceans)

SIC 4481 Deep Sea Transportation of Passengers, Except by Ferry (limited to promotional programs for U.S.flagged vessels)

SIC 4482 Ferries

SIC 4489 Water Transportation of Passengers, Not Elsewhere Classified (includes airboats, swamp buggy rides, excursion boat operations, passenger water transportation on rivers and canals, sightseeing boats, water taxis)

SIC 4491 Marine Cargo Handling (limited to crew activities aboard vessels transporting supplies and cargo within U.S. territorial waters and longshore work performed by crew affected by reciprocity restrictions)

SIC 4492 Towing and Tugboat Services

SIC 4499 Water Transportation Services, Not Elsewhere Classified (limited to cargo salvaging, chartering of commercial boats, lighterage, bunkering, marine salvage, pilotage, steamship leasing, cable laying)

Type of Reservation: National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management and Boards of Directors (Article 1107)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.flagged vessels, including the following:

(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf and in the inland waterways;

(b) requirements for investment in, ownership and control of, and operation of U.S.flagged vessels in foreign trades;

(c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;

(d) requirements related to documenting a vessel under the U.S. flag;

(e) promotional programs, including tax benefits, available for shipowners, operators and vessels meeting certain requirements;

(f) certification, licensing and citizenship requirements for crew members on U.S.flagged vessels;

(g) manning requirements for U.S.flagged vessels;

(h) all matters under the jurisdiction of the Federal Maritime Commission;

(i) negotiation and implementation of bilateral and other international maritime agreements and understandings;

(j) limitations on longshore work performed by crew members;

(k) tonnage duties and light money assessments for entering U.S. waters; and

(l) certification, licensing and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation:

(a) vessel construction and repair; and

(b) landside aspects of port activities, including operation and maintenance of docks, loading and unloading of vessels directly to or from land, marine cargo handling, operation and maintenance of piers, ship cleaning, stevedoring, transfer of cargo between vessels and trucks, trains, pipelines and wharves, waterfront terminal operations, boat cleaning, canal operation, dismantling of vessels, operation of marine railways for drydocking, marine surveyors, except cargo, marine wrecking of vessels for scrap and ship classification societies.

Existing Measures: Merchant Marine Act of 1920, §§ 19 and 27, 46 App. U.S.C. § 876 and § 883 et seq.

Jones Act Waiver Statute, 64 Stat 1120, 46 App. U.S.C., note preceding Section 1

Shipping Act of 1916, 46 App. U.S.C. §§ 802 and 808

Merchant Marine Act of 1936, 46 App. U.S.C. §§ 1151 et seq., 1160-61, 1171 et seq., 1241(b), 1241-1, 1244, and 1271 et seq.

Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1738

46 App. U.S.C. §§ 121, 292 and 316

46 U.S.C. §§ 12101 et seq. and 31301 et seq.

46 U.S.C. §§ 8904 and 31328(2)

Passenger Vessel Act, 46 App. U.S.C. § 289

42 U.S.C. § 9601 et seq.; 33 U.S.C. § 2701 et seq.; 33 U.S.C. § 1251 et seq.

46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103 and 12107(b)

Shipping Act of 1984, 46 App. U.S.C. §§ 1708 and 1712

Nicholson Act, 46 App. U.S.C. §§ 251

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, 46 U.S.C. § 2101 and 46 U.S.C. § 12108

43 U.S.C. § 1841

22 U.S.C. § 1980

Intercoastal Shipping Act, 46 U.S.C. § App. 843

46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the Operation of Pilotage on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445

Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.

19 U.S.C. § 1466

North Pacific Anadramous Stocks Convention Act of 1972, P.L. 102-587; Oceans Act of 1992, Title VII

Tuna Convention Act, 16 U.S.C. § 951 et seq.

South Pacific Tuna Act of 1988, 16 U.S.C. § 973 et seq.

Northern Pacific Halibut Act of 1982, 16 U.S.C. § 773 et seq.

Atlantic Tunas Convention Act, 16 U.S.C. § 971 et seq.

Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. § 2431 et seq.

Pacific Salmon Treaty Act of 1985, 16 U.S.C. § 3631 et seq.

Annex III. Activities Reserved to the State (Chapter 11)

Annex III. Schedule of Mexico

Section A. Activities Reserved to the Mexican State

Mexico reserves the right to perform exclusively, and to refuse to permit the establishment of investments in, the following activities:

1. Petroleum, Other Hydrocarbons and Basic Petrochemicals

(a) Description of activities

(i) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks and pipelines; and

(ii) foreign trade; transportation, storage and distribution up to and including first hand sales of the following goods: crude oil; natural and artificial gas; goods covered by Chapter Six (Energy and Basic Petrochemicals) obtained from the refining or processing of crude oil and natural gas; and basic petrochemicals.

(b) Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 27 y 28

Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo

Ley Orgánica de Petróleos Mexicanos y Organismos Subsidiarios

2. Electricity

(a) Description of activities: the supply of electricity as a public service in Mexico, including, the generation, transmission, transformation, distribution and sale of electricity.

(b) Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 27, 28

Ley del Servicio Público de Energía Eléctrica

3. Nuclear Power and Treatment of Radioactive Minerals

(a) Description of activities: exploration, exploitation and processing of radioactive minerals, the nuclear fuel cycle, the generation of nuclear energy, the transportation and storage of nuclear waste, the use and reprocessing of nuclear fuel and the regulation of their applications for other purposes and the production of heavy water.

(b) Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 27, 28

Ley Reglamentaria del Artículo 27 Constitucional en Materia Nuclear

4. Satellite Communications

(a) Description of activities: the establishment, operation and ownership of satellite systems and earth stations with international links.

(b) Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 28

Ley de Vías Generales de Comunicación

5. Telegraph Services

Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 28

Ley de Vías Generales de Comunicación

6. Radiotelegraph Services

Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 28

Ley de Vías Generales de Comunicación

7. Postal Services

(a) Description of activities: operation, administration and organization of first class mail.

(b) Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 28

Ley del Servicio Postal Mexicano

8. Railroads

(a) Description of activities: operation, administration and control of traffic within the Mexican railway system; supervision and management of railway rightofway; operation, construction and maintenance of basic railway infrastructure.

(b) Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 28

Ley Orgánica de Ferrocarriles Nacionales de México

9. Issuance of Bills (currency) and Minting of Coinage

Measures:

Constitución Política de los Estados Unidos Mexicanos, Artículos 25, 28

Ley Orgánica del Banco de México

Ley Orgánica de la Casa de Moneda de México

Ley Monetaria de los Estados Unidos Mexicanos

10. Control, Inspection and Surveillance of Maritime and Inland Ports

Measures:

Ley de Navegación y Comercio Marítimos

Ley de Vías Generales de Comunicación

11. Control, Inspection and Surveillance of Airports and Heliports

Measures:

Ley de Vías Generales de Comunicación

The measures referred to are provided for transparency purposes and include any subordinate measure adopted or maintained under the authority of and consistent with such measures.

Section B. Deregulation of Activities Reserved to the State

1. The activities set out in Section A are reserved to the Mexican State, and private equity investment is prohibited under Mexican Law. Where Mexico allows private investment to participate in such activities through service contracts, concessions, lending arrangements or any other type of contractual arrangement, such participation shall not be construed to affect the State's reservation of those activities.

2. If Mexican law is amended to allow private equity investment in an activity set out in Section A, Mexico may impose restrictions on foreign ivestment participation notwithstanding Article 1102, and describe them in Annex I. Mexico may also impose derogations from Article 1102 on foreign equity investment participation when selling an asset or ownership interest in an enterprise engaged in activities set out in Section A, and describe them in Annex I.

Section C. Activities Formerly Reserved to the Mexican State

Where an activity was reserved to the Mexican State on January 1, 1992 and is not reserved to the Mexican State on the date of entry into force of this Agreement, Mexico may restrict the initial sale of a state-owned asset or an ownership interest in a state enterprise that performs that activity to enterprises with majority ownership by Mexican nationals, as defined by the Mexican Constitution. For a period not to exceed three years from the initial sale, Mexico may restrict the transfer of such asset or ownership interest to other enterprises with majority ownership by Mexican national, as defined by the Mexican Constitution. On expiration of the three-year period, the obligations of national treatment set out in Article 1102 apply. This provision is subject to Article 1108.

Annex IV. Exceptions from Most-Favored-Nation Treatment (Chapter 11)

Annex IV. Schedule of Canada

Canada takes an exception to Article 1103 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

For international agreements in force or signed after the date of entry into force of this Agreement, Canada takes an exception to Article 1103 for treatment accorded under those agreements involving:

(a) aviation;

(b) fisheries;

(c) maritime matters, including salvage; or

(d) telecommunications transport networks and telecommunications transport services (this exception does not apply to measures covered by Chapter Thirteen (Telecommunications)).

With respect to state measures not yet set out in Annex I pursuant to Article 1108(2), Canada takes an exception to Article 1103 for international agreements signed within two years of the date of entry into force of this Agreement.

For greater certainty, Article 1103 does not apply to any current or future foreign aid program to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the OECD Agreement on Export Credits.

Annex IV. Schedule of Mexico

Mexico takes an exception to Article 1103 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

For international agreements in force or signed after the date of entry into force of this Agreement, Mexico takes an exception to Article 1103 for treatment accorded under those agreements involving:

(a) aviation;

(b) fisheries;

(c) maritime matters, including salvage; or

(d) telecommunications transport networks and telecomunications transport services (this exception does not apply to measures covered by Chapter Thirteen (Telecommunications) or to the production, sale or licensing of radio or television programming).

With respect to state measures not yet set out in Annex I pursuant Article 1108(2), Mexico takes an exception to Article 1103 for international agreements signed within two years of the date of entry into force of this Agreement.

For greater certainty, Article 1103 does not apply to any current or future foreign aid programs to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the OECD Agreement on Export Credits.

Annex IV. Schedule of the United States

The United States takes an exception to Article 1103 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

For international agreements in force or signed after the date of entry into force of this Agreement, the United States takes an exception to Article 1103 for treatment accorded under those agreements involving:

(a) aviation;

(b) fisheries;

(c) maritime matters, including salvage; or

(d) telecommunications transport networks and telecommunications transport services (this exception does not apply to measures covered by Chapter Thirteen (Telecommunications) or the production, sale or licensing of radio or television programming).

With respect to state measures not yet set out in Annex I pursuant to Article 1108(2), the United States takes an exception to Article 1103 for international agreements signed within two years of the date of entry into force of this Agreement.

For greater certainty, Article 1103 does not apply to any current or future foreign aid program to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the OECD Agreement on Export Credits.