MALAYSIA – CHILE FREE TRADE AGREEMENT

Malaysia and The Republic of Chile, hereinafter referred to as "the Parties":

Inspired by their longstanding friendship and cooperation and growing trade relationship;

Desiring to enlarge the framework of relations between them through further liberalising trade;

Recognising that the strengthening of their economic partnership will bring economic and social benefits, create new opportunities for employment and improve the living standards of their people;

Building on their respective rights and obligations under the World Trade Organization (WTO);

Recalling the Asia-Pacific Economic Cooperation (APEC) goals;

Confirming their shared commitment to trade-facilitation through removing non-tariff barriers to trade between them;

Desiring to strengthen the cooperative framework for the conduct of economic relations to ensure it is dynamic and encourages broader and deeper economic cooperation;

Aware that economic development, social development and environmental protection are components of sustainable development and that free trade agreements can play an important role in promoting sustainable development; and

Resolved to promote bilateral trade through the establishment of clear and mutually advantageous trade rules and the avoidance of trade barriers,

Have agreed as follows:

Chapter 1. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

The Parties, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994) hereby establish a free trade area.

Article 1.2. Relation to other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organisation (WTO Agreement) and other agreements to which both Parties are party.

2. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement, to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

Chapter 2. General Definitions

Article 2.1. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

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

(b) Customs Authority means the authority that, according to the legislation of each Party, is responsible for the

administration and enforcement of its customs laws:

(i) in the case of Chile, the Chile Customs Service, and

(ii) in the case of Malaysia, the Royal Malaysian Customs;

(c) customs duties means duties imposed in connection with the importation of a good provided that such customs duties shall not include:

(i) charges equivalent to internal taxes, including excise duties, sales tax, and goods and services taxes imposed in accordance with a Party's commitments under paragraph 2 of Article III of the GATT 1994;

(ii) anti-dumping or countervailing duty or safeguards duty applied in accordance with Chapter 8 (Trade Remedies); or

(iii) fees or other charges that are limited in amount to the approximate cost of services rendered, and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

(d) days means calendar days, including weekends and holidays;

(e) GATT 1994 means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A of the WTO Agreement;

(f) Harmonised System (HS) means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, and their amendments, as adopted and implemented by the Parties in their respective tariff laws;

(g) heading means the first four digits in the tariff classification number under the Harmonised System (HS);

(h) measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, practice, decision, administrative action or any other form;

(i) originating goods means the goods that qualify as originating goods in accordance with Chapter 4 (Rules of Origin);

(j) person means both natural and legal persons;

(k) publish includes publication in written form or on the internet;

(l) subheading means the first six digits in the tariff classification number under the Harmonised System (HS);

(m) territory means:

(i) with respect to Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(ii) with respect to Malaysia,

(A) the territories of the Federation of Malaysia;

(B) the territorial waters of Malaysia and the seabed and subsoil of the territorial waters, and the air space above such areas over which Malaysia has sovereignty; and

(C) any area extending beyond the limits of the territorial waters of Malaysia, and the seabed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living;

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

(o) WTO means the World Trade Organization, and

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

Chapter 3. Trade In Goods

Article 3.1. Definitions

For the purposes of this Chapter:

(a) agricultural goods means those goods referred to in Article 2 of the WTO Agreement on Agriculture;

(b) commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples (1);

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

(d) duty-free means free of customs duty;

(e) goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries, complying with the provisions of Chapter 4 (Rules of Origin);

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

(1) For greater certainty, the term "Commercial Samples" include "Trade Samples". In the case of Malaysia, the term is used in the Customs Duties Order 2007 [P.U.(A) 441/2007].

Article 3.2. Scope and Coverage

Except as otherwise provided, this Chapter applies to trade in goods between the Parties.

Article 3.3. National Treatment

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

2. Paragraph 1 shall also apply to a regional level of government.

Article 3.4. Reduction and/or Elimination of Customs Duties

1. Customs duties which are levied at zero percent or nil on the date of signing of this Agreement shall be kept at zero percent or nil by the Parties.

2. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty or adopt any customs duty on a good of the other Party covered by this Agreement.

3. Except as otherwise provided in this Agreement, each Party shall progressively reduce and/or eliminate its customs duties on originating goods in accordance with its schedule in Annex 3.

4. If a Party reduces its applied most-favoured nation customs duties rate after the entry into force of this Agreement and before the end of the tariff reduction and/or elimination period, the tariff reduction and/or elimination schedule established in Annex 3 shall apply with respect to the new most-favoured nation customs duties rate.

5. On the request of either Party, the Parties shall consult to consider accelerating the reduction and/or elimination of customs duties set out in their schedules in Annex 3. An agreement between the Parties to accelerate the reduction and/or elimination of a customs duty on a good, shall supersede any duty rate determined pursuant to their schedules in Annex 3 for such good when approved by each Party in accordance with their applicable domestic legal procedures.

Article 3.5. Classification of Goods

For the purposes of this Agreement, the classification of goods in trade between the Parties shall be in conformity with the Harmonised System (HS).

Article 3.6. Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, Part I of the Agreement on Customs Valuation, as may be amended, shall be incorporated into and made part of this Agreement, mutatis mutandis.

Article 3.7. Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of the other Party regardless of their origin, but may require that such samples or advertising materials be imported solely for the solicitation of orders for goods or services provided from the territory of the other Party or a non-Party.

Article 3.8. Administrative Fees and Formalities

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

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

3. Each Party shall make available through the internet or a comparable computer-based telecommunications network, a current list of the fees and charges it imposes in connection with importation or exportation.

Article 3.9. Price Band System

Chile may maintain its price band system as established under its Law Nº 18.525 or succeeding system for the products covered by that law (2) , provided it is applied consistent with Chile's rights and obligations under the WTO Agreement.

(2) For greater certainty, Chile shall not incorporate new products in the Price Band System. The only products covered by the price band system are HS 1001.9000, 1101.0000, 1701.1100, 1701.1200, 1701. 9100, 1701.9920 and 1701. 9990.

Article 3.10. Agricultural Export Subsidies

The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together towards an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

Article 3.11. Non-tariff Measures

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

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1 and that they are not constituted, adopted or applied with a view to or with the effect of creating unnecessary restrictions to trade between the Parties.

3. Paragraphs 1 and 2 shall not apply with respect to Chile, to measures concerning the importation of used vehicles, as provided in Law Nº 18.483 or its successor.

Article 3.12. Committee on Trade In Goods

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

2. For the purposes of the effective implementation and operation of this Chapter, the functions of the Committee on Trade in Goods shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter;

(c) reporting the findings and the outcome of discussions to the Joint Committee;

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with subparagraph 4(e) of Article 11.1;

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

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

3. The Committee on Trade in Goods shall meet at such venue and time as may be agreed by the Parties.

Article 3.13. Wine and Spirits

1. Malaysia recognises, in accordance with its domestic legislation, the geographical indication CHILEAN PISCO, that falls within the scope of protection established in Article 22 of the TRIPS Agreement.

2. This shall in no way prejudice the rights that Malaysia may recognise, in addition to Chile, to the geographical indication PISCO, exclusively for Peru, that falls within the scope of protection established in Article 22 of the TRIPS Agreement (3).

3. Chilean geographical indications for wines are established by Decree 464 of the Ministry of Agriculture of December 14, 1994, and its amendments, and by the Law 18.455.

(3) For the purposes of paragraph 1 and 2, this Article does not affect the competence of the Court and legal authority established under the Malaysian Geographical Indication Act 2000.

Chapter 4. Rules of Origin

Article 4.1. Definitions

For the purposes of this Chapter:

(a) CIF means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country of importation;

(b) Competent Authority means bodies or private entities authorised by the Governmental Authority for issuance of the Certificate of Origin;

(c) FOB means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad;

(d) fungible goods or materials mean goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(e) goods means any materials and products which can be wholly obtained or produced, or manufactured, even if they are intended for later use in another manufacturing operation;

(f) Governmental Authority means the authority of each respective Party responsible for the certification of origin. In the case of Chile, such authority is the General Directorate of International Economic Affairs, Ministry of Foreign Affairs; and in the case of Malaysia, the Ministry of International Trade and Industry;

(g) indirect materials means a good used in the production, testing or inspection of another 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:

(i) fuel, energy, catalysts and solvents;

(ii) equipment, devices and supplies used for testing or inspection of the goods;

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

(iv) tools, dies and moulds;

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

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

(vii) any other materials which 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.

(h) material means a good or any matter or substance such as raw materials, ingredients, parts, components, sub-components or sub-assemblies that are used or consumed in the production of goods or transformation of another good;

(i) packing materials and containers for shipment means goods used to protect a good during its transportation, other than containers and packaging materials used for retail sale;

(j) preferential treatment means the rate of customs duties applicable to an originating good of the exporting Party; and

(k) production means methods of obtaining goods including, but not limited to growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, aquaculture, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

Article 4.2. Origin Criteria

Except as otherwise provided in this Chapter, a good shall be considered as originating in a Party when:

(a) the good is wholly obtained or produced entirely in the territory of a Party as defined in Article 4.3;

(b) the good is produced in the territory of a Party, using non-originating materials that conform to a qualifying value content or a change in tariff heading as defined in Articles 4.4 and 4.5 respectively; or

(c) the good satisfies the product specific rules as specified in Annex 4-B (Product Specific Rules).

Article 4.3. Wholly Obtained or Produced Goods

The following goods shall be considered as wholly obtained or produced entirely in the territory of a Party:

(a) plants, plant goods and vegetable goods harvested, picked or gathered in the territory of the Party;

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

(c) goods obtained from live animals referred to in subparagraph (b);

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing and farming conducted in the territory of the Party;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from its soil, water, seabed or beneath the seabed of the Party;

(f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;

(g) goods such as fish, shellfish and other marine life or marine goods taken from the high seas by vessels registered or entitled to fly the flag of that Party;

(h) goods obtained, processed or produced on board a factory ship registered or recorded with that Party or entitled to fly the flag of that Party, exclusively from products referred to in subparagraph (f);

(i) waste, scrap or used goods collected in the territory of the Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the recovery of raw materials; and

(j) goods obtained or produced in the territory of a Party solely from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

Article 4.4. Qualifying Value Content

1. The qualifying value content of a good shall be calculated as follows:

QVC = V -VNM / V x 100

where:

QVC -is the qualifying value of a good content expressed as a percentage;

V -is the FOB value of the final good; and

VNM -is the CIF value of the non-originating materials.

2. The percentage of qualifying value content shall not be less than 40%, except for the goods listed in Annex 4-B (Product Specific Rules) as provided under subparagraph (c) of Article 4.2.

Article 4.5. Change In Tariff Heading

Change in tariff heading refers to the final good that is classified under a heading of the Harmonised System (HS) which must be different from the headings under which the non-originating materials used in the production process of the said good as provided under subparagraph (b) of Article 4.2.

Article 4.6. Indirect Materials

1. Any indirect material used in the production of a good shall be treated as originating materials, irrespective of whether such indirect material originates from a non-Party.

Article 4.7. Minimal Operations and Processes That Do Not Confer Origin

The following minimal operations or processes, undertaken exclusively by itself or in combination, do not confer origin:

(a) operations to ensure the preservation of products in good condition during transport and storage such as drying, freezing, ventilation, chilling and like operations;

(b) sifting, classifying, washing, cutting, slitting, bending, coiling or uncoiling, sharpening, simple grinding, slicing ;

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

(d) painting and polishing operations;

(e) testing or calibration;

(f) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(g) simple mixing (4) of goods, whether or not of different kinds;

(h) simple assembly (5) of parts of products to constitute a complete good;

(i) changes of packing, unpacking or repacking operations, and breaking up and assembly of consignments;

(j) affixing or printing marks, labels, logos and other like distinguishing signs on goods or their packaging;

(k) mere dilution with water or another substance that does not materially alter the characteristics of the goods; and

(l) husking, partial or total bleaching, polishing and glazing of cereals and rice.

(4) "Simple mixing" generally describes an activity which does not need special skills, machine, apparatus or equipment especially produce or

install for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a bio chemical process) which results in a molecule with a new structure by breaking intra molecular bonds and by forming new intra molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

(5) "Simple assembly" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

Article 4.8. Accumulation

An originating good of a Party which is used in the processing or production in the territory of the other Party as material for finished good, shall be deemed as a material originating in the territory of the latter Party where the working or processing of the finished goods has taken place.

Article 4.9. De Minimis

A good that does not undergo a change in tariff classification shall be considered as originating if:

(a) the value of all non-originating materials used in its production that do not undergo the required change in tariff classification do not exceed 10% of the FOB value of the good; and

(b) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

Article 4.10. Fungible Goods and Materials

1. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party.

2. The method of inventory management chosen by the exporter must be maintained for at least one year.

Article 4.11. Accessories, Spare Parts, Tools and Instructional or Information Materials

1. Accessories, spare parts, tools, instructional or other information materials delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be regarded as a part of the good, and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification provided that:

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

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

2. If the goods are subject to qualifying value content requirement, the value of the accessories, spare part, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the goods.

Article 4.12. Treatment of Packages, Packing Materials and Containers

1. If a good is subject to the qualifying value content provided in Article 4.4, the value of the packages and packing materials for retail sale, shall be taken into account in determining the origin of that good as originating or non-originating, as the case may be, provided that the packages and packing materials are considered to be forming a whole with the good.

2. If a good is subject to the change in tariff classification criterion provided in Article 4.5, packages and packing materials classified together with the packaged good, shall not be taken into account in determining origin.

3. Packing materials and containers used exclusively for the transportation of a good shall not be taken into account in determining the origin of such goods.

Article 4.13. Direct Consignment

1. A good shall be deemed as directly consigned from the exporting Party to the importing Party:

(a) if the goods are transported without passing through the territory of any non-Party; or

(b) if the goods are transported for the purpose of transit through a non-Party with or without transshipment or temporary storage in such non-Party, provided that:

(i) the transit is justified for geographical reasons or transport requirements;

(ii) the goods have not entered into trade or consumption in the territory of the non-Party; and

(iii) the goods have not undergone any operation in the territory of the non-Party other than unloading, reloading and splitting-up/bulk breaking or any operation required to keep the goods in good condition.

2. A directly consigned good shall retain its originating status.

3. In the case where an originating good of the exporting Party is imported through one or more non-Parties or after an exhibition in a non-Party, the Customs Authority of the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit supporting documentation such as transport, customs documents or other documents.

Article 4.14. Certificate of Origin

A claim that goods are eligible for preferential treatment under this Agreement shall be supported by a Certificate of Origin in the form as prescribed in Annex 4-C (Form of Certificate of Origin), issued by the Competent Authority of the exporting Party.

Article 4.15. Committee on Rules of Origin and Customs Administration

1. For the purposes of the effective implementation and operation of this Chapter and Chapter 5 (Customs Administration), the Parties hereby establish a Committee on Rules of Origin and Customs Administration, comprising of representatives of each Party.

2. The functions of the Committee on Rules of Origin and Customs Administration shall be to:

(a) review the implementation and operation of this Chapter and Chapter 5 (Customs Administration);

(b) report its findings to the Joint Committee;

(c) identify areas, relating to this Chapter and Chapter 5 (Customs Administration), to be improved for facilitating trade in goods between the Parties; and

(d) carry out other functions as may be delegated by the Joint Committee in accordance with subparagraph 4(e) of Article 11.1.

3. The Committee on Rules of Origin and Customs Administration shall meet at such venues and times as may be agreed by the Parties.

Chapter 5. Customs Administration

Article 5.1. Definitions

For the purposes of this Chapter:

(a) Customs Authority means the authority that according to the legislation of each Party is responsible for the administration and enforcement of its customs laws:

(i) in the case of Chile, the Chile Customs Service; and

(ii) in the case of Malaysia, the Royal Malaysian Customs;

(b) customs laws means such laws and regulations administered and enforced by the customs authority of each Party

concerning the importation, exportation, and transit of goods, relating to customs duties, charges and other taxes, or to prohibitions, restrictions and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

(c) information means any data, documents, reports and certified or authenticated copies thereof or other communications;

(d) Requesting Authority means the Customs Authority which requests assistance; and

(f) Requested Authority means the Customs Authority from which assistance is requested.

Article 5.2. Objectives

The objectives of this Chapter are to:

(a) simplify and harmonise customs procedures of the Parties;

(b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the Parties;

(c) ensure efficient and expeditious release of goods;

(d) facilitate trade in goods between the Parties by the use of information and communications technology, taking into account international standards; and

(e) promote cooperation between the customs authorities with relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

Article 5.3. Scope and Coverage

1. This Chapter shall apply to customs procedures for goods traded between the Parties.

2. This Chapter shall be implemented by each Party in accordance with the laws and regulations in force in each Party and within the competence and available resources of the Customs Authority of each Party.

Article 5.4. Publication and Enquiry Points

1. For the purposes of this Chapter, each Party shall:

(a) publish, on the internet or in print form, all statutory and regulatory provisions and procedures applicable or enforced by its Customs Authority; and

(b) designate one or more enquiry points to address enquiries from the other Party concerning customs matters, and shall make available on the internet or print form, information concerning procedures for making such enquiries.

2. To the extent possible, each Party may have prior consultation on any related regulations of general application governing customs matters that it proposes to adopt and shall publish any regulations of general application governing customs matters as soon as it comes into force.

Article 5.5. Release of Goods

1. Each Party shall endeavour to apply customs procedures in a predictable, consistent and transparent manner for the efficient release of goods in order to facilitate trade between the Parties.

2. For the prompt release of goods traded between the Parties, each Party shall, to the extent possible:

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

(b) make use of information and communications technology;

(c) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations; and

(d) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the World Customs Organization.

Article 5.6. Risk Management

1. In order to facilitate release of goods traded between the Parties, the Customs Authority of each Party shall use risk management methodology.

2. The Customs Authority of each Party shall exchange information, including best practices, on risk management techniques and other enforcement techniques. 3. Each Party shall endeavour to adopt or maintain risk management systems that enable its Customs Authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

Article 5.7. Cooperation and Capacity Building

1. Each Party shall cooperate on capacity building, such as training, technical assistance, exchange of experts and any other forms of cooperation, as may be mutually agreed upon by the Parties, for trade facilitation.

2. To the extent permitted by their domestic laws and regulations, the Customs Authority of each Party shall assist each other in relation to:

(a) achieving compliance with their laws and regulations pertaining to the implementation and operation of the provisions of this Agreement; and such other customs matters as the Parties may agree;

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

(c) enforcement of prohibitions and restrictions on exports to and imports from their respective territories;

(d) joint efforts to combat customs fraud; and (e) cooperation in any other areas as may be mutually agreed upon by the Parties.

Article 5.8. Mutual Assistance

1. The Customs Authority of each Party shall, to the extent possible, provide the Customs Authority of the other Party, upon request or on its own initiative, with information which helps to ensure proper application of customs laws and the prevention of violation or attempted violation of customs laws.

2. To the extent permitted by their respective domestic laws, the customs authorities may provide each other with mutual assistance in order to prevent or investigate violations of customs laws or when information is required for use in judicial proceedings.

3. The request pursuant to paragraph 1 shall, wherever appropriate, specify:

(a) the verification procedures that the Requesting Authority has undertaken or attempted to undertake; and

(b) the specific information that the Requesting Authority requires, which may include:

(i) subject and reason for the request;

(ii) a brief description of the matter and the action requested; and

(iii) the names and addresses of the parties concerned with the proceedings, if known.

Article 5.9. Enforcement Against Illicit Trafficking

The Customs Authority of each Party shall, to the extent permitted by their laws and regulations, wherever possible, cooperate and exchange information in their enforcement against the trafficking of illicit drugs and other prohibited goods in their respective territories.

Article 5.10. Information and Communications Technology

The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures including sharing best practices, for the purpose of improving their customs procedures.

Article 5.11. Confidentiality

1. Any information communicated under this Chapter shall be treated as confidential unless the Requested Authority consents in writing to the disclosure of such information.

2. The Requested Authority may limit the information communicated under this Chapter if the Requesting Authority is unable to give the assurance that the information is used solely for the purpose it was requested for.

3. If a Requesting Authority would be unable to comply with a similar request in case such a request was made by the Requested Authority, the Requesting Authority shall draw attention to that fact in its request. Execution of such a request shall be at the discretion of the Requested Authority

4. Any information communicated under this Chapter shall be used only by the Requesting Authority, solely for the purpose of administrative assistance according to the terms set out in this Chapter.

5. Any information in the possession of the requested customs administration and communicated under this Chapter, if required for use in judicial proceedings, shall only be disclosed in accordance with the laws and regulations of the respective Party.

6. Notwithstanding the provisions of this Chapter, if the communication of any information requested under this Chapter is prohibited by the laws or regulations, considered to be incompatible or prejudicial to the national interest or national security of the country of the Requested Authority, the Requested Authority shall not be required to provide such information or may provide such information subject to any terms, conditions or limitations it may prescribe.

Article 5.12. Review and Appeal

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

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

(b) judicial review of the determinations.

Article 5.13. Penalties

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative and, where appropriate, criminal sanctions for violations of its customs laws and regulations.

Article 514. Advance Rulings

1. Each Party shall issue, prior to the importation of a good into its territory, a written advance ruling at the written request of an importer in its territory, with regard to:

(a) tariff classification; and

(b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Agreement on Customs Valuation.

2. For the issuance of the written advance ruling, each Party will apply their domestic laws and procedures.

Chapter 6. Sanitary and Phytosanitary Measures

Article 6.1. Definitions

For the purposes of this Chapter:

(a) SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A of the WTO Agreement;

(b) the definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis; and

(c) the relevant definitions developed by the Codex Alimentarius Commission (hereinafter referred to as "Codex"), World

Organisation for Animal Health (hereinafter referred to as "OIE") and the International Plant Protection Convention (hereinafter referred to as "IPPC") apply to the implementation of this Chapter.

Article 6.2. Objectives

The objectives of this Chapter are to:

(a) facilitate implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by the relevant international organizations;

(b) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;

(c) increase mutual understanding of each Party's regulations and procedures relating to the implementation of sanitary and phytosanitary measures;

(d) provide a means to improve communication and cooperation on sanitary and phytosanitary issues; and

(e) provide means to resolve issues on sanitary and phytosanitary arising from the implementation of this Agreement.

Article 6.3. Scope and Coverage

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

Article 6.4. General Obligations

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

2. The Parties shall cooperate in relevant international bodies engaged in work on sanitary and phytosanitary related issues, including the WTO SPS Committee, Codex, OIE and IPPC.

Article 6.5. Consultations on Sanitary and Phytosanitary Measures

1. On the request of a Party for consultations on any matter arising under this Chapter, the Parties shall agree to enter into consultations by notifying the Contact Points listed in Annex 6-B.

2. Consultations will be carried out within 30 days of receiving the notification, unless otherwise agreed by the Parties. Such consultations may be conducted via teleconferencing, videoconferencing, or any other means mutually agreed upon by the Parties.

3. If the consultations have failed to settle the dispute and the matter is subsequently referred to the dispute settlement procedure contained in Chapter 12 (Dispute Settlement), the consultations under this Article shall replace those provided for in Article 12.3.

Article 6.6. Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as "SPS Committee") with the objective of ensuring the implementation of this Chapter. The SPS Committee shall be comprised of representatives of each Party who have responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures.

2. The Parties shall establish the SPS Committee in a period no later than one year after the date of entry into force of this Agreement through an exchange of letters.

3. The SPS Committee shall seek to enhance cooperation between the Parties' agencies with responsibility for sanitary and phytosanitary measures.

4. For the purposes of the effective implementation and operation of this Chapter, the functions of the SPS Committee shall be to provide a forum for:

(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that

relate to those measures;

(b) discussion on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(c) consulting on issues, relating to the meetings of the WTO SPS Committee, Codex, OIE and IPPC;

(d) coordinating technical cooperation programs on sanitary and phytosanitary measures;

(e) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement;

(f) addressing any bilateral issues arising from the implementation of sanitary and phytosanitary measures between the Parties; and

(g) reviewing progress on addressing sanitary and phytosanitary measures that may arise between the Competent Authorities listed in Annex 6-A.

5. Unless otherwise agreed by the Parties, the SPS Committee shall meet annually.

6. The SPS Committee shall establish its own rules of procedure during its first meeting to guide its operation which may be revised or further developed.

7. The SPS Committee may agree to establish ad hoc technical working groups in accordance with its rules of procedure.

Article 6.7. Competent Authorities and Contact Points

1. The Competent Authorities responsible for the implementation of the measures referred to in this Chapter are listed in Annex 6-A. The Contact Points that have the responsibility relating to communications between the Parties are set out in Annex 6-B.

2. The Parties shall inform each other of any significant changes in the structure, organisation and division of the competency of its Competent Authorities or Contact Points.

Article 6.8. Cooperation

1. The Parties agree to cooperate to facilitate the implementation of this Chapter.

2. The Parties shall explore opportunities for further cooperation and collaboration on sanitary or phytosanitary measures of mutual interest, consistent with the provisions of this Chapter.

Chapter 7. Technical Barriers to Trade

Article 7.1. Definitions

For the purposes of this Chapter:

(a) TBT Agreement means the Agreement on Technical Barriers to Trade, contained in Annex 1A of the WTO Agreement; and

(b) Technical regulations, standards and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Article 7.2. Objectives

The objectives of this Chapter are to increase and facilitate bilateral trade through the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade and the enhancement of bilateral cooperation.

Article 7.3. Scope and Coverage

1. Except as provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations, and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties.

2. This Chapter does not apply to sanitary and phytosanitary measures which are covered Chapter 6 (Sanitary and Phytosanitary Measures).

3. This Chapter does not apply to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies.

Article 7.4. Reaffirmation of Agreement on Technical Barriers to Trade

The Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 7.5. International Standards

1. The Parties shall use international standards, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

2. For the purposes of paragraph 1, the Parties shall apply the principles set out in the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2,5 and Annex 3 of the Agreement, adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX.

Article 7.6. Technical Regulations

1. Consistent with the TBT Agreement, each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its regulations.

2. A Party shall, upon the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

Article 7.7. Trade Facilitation

1. The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties.

2. To this end, the Parties shall seek to identify trade facilitating bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

(a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;

(b) alignment with international standards;

(c) reliance on a supplier's declaration of conformity;

(d) use of accreditation to qualify conformity assessment bodies; and

(e) cooperation through recognition of conformity assessment procedures.

Article 7.8. Conformity Assessment

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures, including:

(a) voluntary arrangements between conformity assessment bodies from each Party's territory;

(b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the other Party's territory;

(c) unilateral recognition by one Party of the results of conformity assessments performed in the other Party's territory;

(d) accreditation procedures for qualifying conformity assessment bodies and promotion of the recognition of accreditation and certification bodies under international mutual recognition arrangements;

(e) government designation of conformity assessment bodies;

(f) reliance on a supplier's declaration of conformity, where appropriate; and

(g) use of regional and international multilateral recognition agreements and arrangements which the Parties are members to.

2. The Parties shall exchange information on the mechanisms referred in paragraph 1 with a view to facilitating acceptance of conformity assessment results.

3. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved.

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

5. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory.

6. Where a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

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

Article 7.9. Transparency

1. Each Party shall endeavour to ensure that relevant interested persons of the other Party are allowed to participate in any public consultative process, if organised, on the draft standards, technical regulations and conformity assessment procedures on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it shall:

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

(b) transmit the proposal electronically to the other Party through the enquiry point the Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement. Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

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

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

Article 7.10. Technical Cooperation

With a view to fulfil the objectives of this Chapter, the Parties shall, on the request of the other Party and where possible, cooperate towards:

(a) exchanging legislation, regulations, rules and other information and periodicals published by the national bodies responsible for technical regulations, standards, conformity assessment, metrology and accreditation;

(b) exchanging general information and publications on conformity assessment, certification bodies, including notified

bodies, designation and accreditation of conformity assessment bodies;

(c) providing technical advice, information and assistance on mutually agreed terms and conditions and exchanging experience to enhance the other Party's system for standards, technical regulations and conformity assessment procedures, and related activities;

(d) increasing the information exchange, particularly regarding noncompliance of a product in bilateral trade with relevant technical regulations and conformity assessment procedures of a Party;

(e) examining the compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;

(f) giving favourable consideration, on request of the other Party, to any sector specific proposal for further cooperation;

(g) promoting and encouraging bilateral cooperation between respective organisations, public and/or private, of the Parties responsible for standardisation, testing, certification, accreditation and metrology;

(h) increasing their bilateral cooperation in the relevant international organisations and fora dealing with the issues covered by this Chapter; and

(i) informing the other Party, as far as possible, about the agreements or programs subscribed at international level in relation to TBT issues.

Article 7.11. Committee on Technical Barriers to Trade

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

2. For purposes of this Article, the TBT Committee shall be coordinated by:

(a) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor; and

(b) in the case of Malaysia, the Department of Standards Malaysia, Ministry of Science, Technology and Innovation.

3. In order to facilitate the communication and ensure the proper functioning of the TBT Committee, the Parties will designate a contact point no later than two months following the date of entry into force of this Agreement.

4. The functions of the TBT Committee shall include:

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

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

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

(d) exchanging information on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party;

(e) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;

(f) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;

(g) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures;

(h) consulting on any matter arising under this Chapter, upon a Party's request;

(i) reviewing this Chapter in light of any development under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments;

(j) reporting to the Joint Committee on the implementation of this Chapter, as it considers appropriate; and

(k) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them.

5. A Party shall, upon request, give favourable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.

6. The TBT Committee shall meet when and where it considers necessary, preferably once a year, with the presence of the representatives of each Party or held via teleconference, videoconference or through other means mutually determined by the Parties. By mutual agreement, ad hoc working groups may be established if necessary.

Article 7.12. Information Exchange

Any information or explanation provided upon request of a Party pursuant to the provisions of this Chapter, shall be provided in print or in electronic form within a reasonable period of time agreed between the Parties.

Chapter 8. Trade Remedies

Article 8.1. Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards, as they may be amended.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, as they may be amended.

Article 8.2. Anti-dumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, as they may be amended, with regard to the application of anti-dumping and countervailing duties.

2. No provision of this Agreement, including the provisions of Chapter 12 (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to anti-dumping or countervailing duty measures. Bilateral Safeguard Measures

Article 8.3. Definitions

For the purposes of this Section:

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

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

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

(d) threat of serious injury means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility; and

(e) transition period means the five year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

Article 8.4. Imposition of a Bilateral Safeguard Measure

1. A Party may impose a bilateral safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of the other Party is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing like or directly competitive goods.

2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment, apply a bilateral safeguard measure, consisting of:

(a) suspending further reduction of any rate of customs duty provided for under this Agreement on the originating good from the date on which the action to apply the bilateral safeguard measure is taken; or

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

(i) the most-favoured-nation applied rate of customs duty in effect on the date on which the action to apply the bilateral safeguard measure is taken; or

(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

3. Each Party shall not apply bilateral safeguard measure on an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 3.

Article 8.5. Scope and Duration of Safeguard Measures

1. A Party may apply a bilateral safeguard measure, including any extension thereof, for no longer than three years. Regardless of its duration, such measure shall terminate at the end of the transition period. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.

2. Neither Party may impose a bilateral safeguard measure more than once on the same good.

3. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good in accordance with:

(a) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards; or

(b) Article 5 of the WTO Agreement on Agriculture.

4. Neither Party may impose a bilateral safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994, the WTO Agreement on Safeguards or the WTO Agreement on Agriculture and neither Party may continue maintaining a bilateral safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994, the WTO Agreement on Safeguards or the WTO Agreement on Agriculture.

5. Upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect had the measure not been taken.

Article 8.6. Investigation Procedures

1. A Party may impose a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the WTO Agreement on Safeguards, and to this end Articles 3 and 4 of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, mutatis mutandis.

2. The investigation referred to in paragraph 1 shall, as far as possible, be completed within 180 days after being initiated but in no case shall exceed one year.

Article 8.7. Notification

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

(a) initiating an investigation under Article 8.6;

(b) taking a decision to apply, extend or modify a bilateral safeguard measure, or to apply a provisional measure; and

(c) taking a decision to progressively liberalise a bilateral safeguard measure previously applied.

2. The Party making the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information,

which shall include:

(a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of an originating good subject to the investigation and its subheading or a more detailed level of the Harmonised System (HS), the period subject to the investigation and the date of initiation of the investigation; and;

(b) in the written notice referred to in subparagraph 1(b), evidence of serious injury or threat thereof caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading or a more detailed level of the Harmonised System (HS), a precise description of the bilateral safeguard measure, the proposed date of its introduction and its expected duration.

3. With reference to the notification referred to in subparagraph 1(b), a Party shall provide to the other Party a copy of the public version of the report of its competent authorities as required under Article 3.1 of the WTO Agreement on Safeguards.

Article 8.8. Compensation

1. The Party taking a bilateral safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the measure. Such consultations shall begin within 30 days of the imposition of the measure.

2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

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

4. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.

Article 8.9. Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2 (a) or (b) of Article 8.4 pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

2. The Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated not later than seven days after the provisional bilateral safeguard measure is taken.

3. The duration of the provisional bilateral safeguard measure shall not exceed 180 days. During that period, the pertinent requirements of Article 8.6 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 1 of Article 8.5.

4. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in Article 8.6 does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

Article 8.10. Language of Communications

Written notice referred to in Article 8.7 and any other communication between the Parties shall be done in the English language.

Article 8.11. Cooperation

The Parties agree to provide cooperation relating to:

(a) enhancing each Party's knowledge and understanding of the other Party's trade remedy laws, policies and practices; and

(b) exchange of information on issues relating to:

(i) anti-dumping, safeguards and subsidies and countervailing measures;

(ii) international issues relating to the WTO Doha Round Rules negotiations; and

(iii) practices by the Parties' competent authorities in anti-dumping, safeguards and subsidies and countervailing investigations.

Chapter 9. Cooperation

Article 9.1. Basic Principles

1. The Parties shall, in accordance with their applicable laws and regulations, promote cooperation under this Agreement for their mutual benefit in order to facilitate trade and investment between them and to promote the well-being of the people of both countries.

2. For this purpose, the Parties shall cooperate and, where necessary and appropriate, encourage and facilitate cooperation between entities such as business communities and academia.

Article 9.2. General Objectives

The framework for cooperative activities established under this Chapter is aimed inter alia at:

(a) enhancing socio-economic development;

(b) strengthening economic competitiveness;

(c) advancing human resources development;

(d) creating new opportunities for trade and investment, fostering innovation and encouraging research and development;

(e) increasing and further developing the level of cooperation activities between the Parties in areas of mutual interest;

(f) recognising the role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(g) strengthening and building on existing cooperative relationships;

(h) promoting sustainable development; and

(i) improving overall well-being of the people of both countries.

Article 9.3. Scope

1. Cooperation between the Parties under this Chapter will complement the cooperation between the Parties set out in other Chapters of this Agreement.

2. Areas of cooperation may include:

(a) trade and economy;

(b) research, development and innovation;

(c) science and technology;

(d) agriculture and food industry;

(e) sustainable forest management;

(f) mining and mining related industry;

(g) energy;

(h) small and medium enterprises;

(i) intellectual property;

(j) tourism;

(k) education and human capital development;

(l) culture;

(m) environment; and

(n) promotion of investment.

3. Cooperative activities will be agreed between the Parties and may include:

(a) exchanges of people and information;

(b) dialogues, conferences and seminars;

(c) contacts between scientists and academia;

(d) the development of joint research programs; and

(e) encouraging private sector cooperation.

4. Areas of cooperation may be developed through existing agreements and through appropriate implementing arrangements.

Article 9.4. Research, Development and Innovation

Cooperation in innovation, research and development will be focused on cooperative activities in sectors where mutual and complementary interests exist. Where appropriate, they will also promote partnerships in the support of the development of innovative products and services and activities to promote linkage, innovation and technology exchange.

Article 9.5. Environment

1. Recognising the importance of strengthening capacity to promote sustainable development with their three interdependent and mutually reinforcing components: economic growth, social development and environmental protection, the Parties agree to cooperate in the field of environment.

2. The Parties agree that it is inappropriate to enact or use their environmental laws, regulations, policies and practices for trade protectionist purposes; as well as it is inappropriate to relax, or fail to enforce or administer, their environment laws and regulations to encourage trade and investment.

3. The aim of cooperation will be the prevention and/or reduction of contamination and degradation of natural resources and ecosystems and rational use of the latter; through developing and endorsing mutually agreed special programmes and projects dealing, inter alia, with the transfer of knowledge and technology.

4. The intention of the Parties is to cooperate in environmental areas of common global or domestic concern, which may include, among others:

(a) climate change;

(b) biodiversity and conservation of natural resources;

(c) management of hazardous chemicals;

(d) air quality;

(e) water management;

(f) waste management;

(g) marine and coastal ecological conservation and pollution control;

(h) strategic environmental impact assessment;

(i) mining practices and mines rehabilitation; and

(j) improvement of environmental awareness.

5. In order to facilitate communication for purposes of this Article, each Party will designate a contact point no later than six months from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.

Article 9.6. Cooperation Committee

1. For the purposes of this Chapter, the Parties hereby establish a Cooperation Committee comprising representatives of each Party.

2. The Cooperation Committee shall be coordinated and co-chaired by:

(a) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor; and

(b) in the case of Malaysia, the Ministry of International Trade and Industry

3. In order to ensure the proper functioning of the Cooperation Committee, each Party will designate a contact point no later than six months from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.

4. The Cooperation Committee shall meet in or shortly after the first year of entry into force of this Agreement, and thereafter as agreed by the Parties.

5. The Cooperation Committee shall:

(a) establish its operating procedures;

(b) identify and discuss cooperative activities which might be undertaken under this Chapter;

(c) review and monitor the implementation and operation of this Chapter;

(d) exchange information on the field of cooperation;

(e) undertake such other functions within the context of this Chapter to foster cooperation including establishing working groups as the Parties may agree; and

(f) report periodically to the Joint Committee the results of its meetings.

Article 9.7. Costs of Cooperation

1. The implementation of cooperation under this Chapter shall be subject to the availability of funds and the applicable laws and regulations of each Party.

2. Costs of cooperation under this Chapter shall be borne by the Parties within the limits of their own capacities and through their own channels, in an equitable manner to be mutually agreed upon between the Parties.

Article 9.8. Dispute Settlement

Chapter 12 (Dispute Settlement) shall not apply to this Chapter.

Chapter 10. Transparency

Article 10.1. Definition

For the purposes of this Chapter, administrative ruling of general application means an administrative or quasi-judicial ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative proceeding that applies to a particular person or good of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 10.2. Contact Points

1. The contact point referred in Annex 10 shall facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 10.3. Publication

1. Each Party shall ensure, wherever possible in electronic form, that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide, where appropriate, interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 10.4. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall, where possible, provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

3. Any notification, request or information under this Article shall be provided to the other Party through the relevant contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 10.5. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner its measures referred to in Article 10.3, each Party shall ensure that in its administrative proceedings in which these measures are applied to particular persons or goods of the other Party in specific cases that :

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with its 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 question;

(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 10.6. 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 office or authority with respect to the administrative action that is the subject of the decision.

Chapter 11. Institutional Provisions

Article 11.1. Joint Committee

1. The Parties hereby establish a Joint Committee.

2. The Joint Committee may meet at the level of Ministers or senior officials, as mutually determined by the Parties. The Joint Committee shall be co-chaired by senior government officials of the Parties, unless the Parties agree to convene the meeting at ministerial level. Each Party shall be responsible for the composition of its delegation.

3. The functions of the Joint Committee shall be to:

(a) review the general functioning of this Agreement;

(b) review, consider and, as appropriate, decide on specific matters related to the operation, application and implementation of this Agreement, including matters reported by committees or working groups established under this Agreement;

(c) supervise the work of committees, working groups and contact points established under this Agreement;

(d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement including matters referred to the Joint Committee pursuant to Article 12.4; and

(e) carry out any other functions as the Parties may agree.

4. The Joint Committee may:

(a) consider and recommend to the Parties any amendment to this Agreement or other modification or rectification to the commitments therein, in accordance to the necessary domestic legal procedures by each Party (7) ;

(b) adopt any decisions and recommendations of the committees if necessary;

(c) as appropriate, issue interpretations of the Agreement;

(d) seek technical advice of relevant experts on matters covered by this Agreement; and

(e) delegate any of its functions to committees and working groups established under this Agreement.

(7) Chile shall implement any amendment or other modification approved by the Joint Committee of the following provisions of the Agreement through executive agreements, in accordance with the Constitución Política de la República de Chile: (i) the Schedules attached to Annex 3 (Reduction and/or Elimination of Customs Duties), to accelerate tariff elimination; and (ii) the rules of origin established in Annexes 4-A (Operational Certification Procedure) and 4-B (Product Specific Rules).

Article 11.2. Meetings of the Joint Committee

1. The Joint Committee shall meet:

(a) within the first year of entry into force of this Agreement; and (b) thereafter at such frequency as the Parties may agree.

2. The Joint Committee shall meet alternately in the territory of each Party, unless the Parties otherwise agree.

3. The Joint Committee shall also meet in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties.

4. All decisions of the Joint Committee shall be taken by mutual agreement.

5. The Joint Committee may adopt its own rules of procedure.

Chapter 12. Dispute Settlement

Article 12.1. Scope and Coverage

Unless otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement, wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 12.2. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another agreement to which the Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has selected a particular forum for settling a matter, that forum shall be used to the exclusion of other fora in respect of that matter.

3. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to an arbitral tribunal.

Article 12.3. Consultations

1. Either Party may request for consultations with the other Party concerning the interpretation, implementation or application of this Agreement in accordance with Article 12.1, including a matter relating to a measure that the other Party proposes to take (hereinafter referred to in this Chapter as "proposed measures").

2. A request for consultations shall be in writing setting out the reasons for the request including identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable examination of the matter. The Party to which the request is made shall reply to the request in writing within 10 days after the date of its receipt, and shall enter into consultations within a period of no more than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of the matter through consultations.

4. A Party may request the other Party to make available for the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter under consultations.

5. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 12.4. Referral of Matters to the Joint Committee

1. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under paragraph 2 of Article 12.3, or 20 days in cases of urgency including those where the matter concerns perishable goods, the requesting Party may refer the matter to the Joint Committee by delivering written notification to the other Party.

2. The Joint Committee shall promptly meet and endeavour to reach a mutually satisfactory resolution of the dispute.

3. The Joint Committee may: (a) call on such technical advisers or create such working groups or expert groups as it deems necessary; or (b) make recommendations, as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

Article 12.5. Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be

terminated at any time.

2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal is designated under Article 12.8.

3. Proceedings involving good offices, mediation and conciliation and positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 12.6. Establishment of Arbitral Tribunals

1. The complaining Party may request in writing for the establishment of an arbitral tribunal if:

(a) the Party complained against does not enter into consultations within 30 days after the date of its receipt of the request for consultations under Article 12.3;

(b) the Parties fail to resolve the matter within 60 days after the day of receipt of the request for consultations, or 30 days regarding a matter concerning perishable goods, if there is no referral to the Joint Committee under Article 12.4; or

(c) the Parties fail to resolve the matter within 30 days after the day of the referral of the matter to the Joint Committee, or 15 days regarding a matter concerning perishable goods.

2. A Party shall not refer a matter concerning a proposed measure to an arbitral tribunal.

3. The request to establish an arbitral tribunal shall identify:

(a) the specific measures at issue;

(b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached or any other relevant provisions; and

(c) the factual basis for the complaint.

4. The arbitral tribunal shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed

Article 12.7. Terms of Reference

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of the arbitral tribunal shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 12.6, to make findings of law and fact and determinations on whether the measure is not in conformity with the Agreement and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitral tribunal may make recommendations for resolution of the dispute."

Article 12.8. Composition of Arbitral Tribunals

1. An arbitral tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator who may be its national within 30 days of the receipt of the request to establish an arbitral tribunal.

2. The Parties shall designate by common agreement the third arbitrator, who shall be the Chair of the arbitral tribunal. If a Party has not appointed an arbitrator pursuant to paragraph 1 or if the Chair of the arbitral tribunal has not been designated by the Parties within 45 days of the receipt of the request to establish an arbitral tribunal, either Party may request the Director-General of the WTO to appoint the arbitrator or arbitrators not yet appointed.

3. If the Director-General of the WTO has not appointed the arbitrator or arbitrators within 30 days after the date of the request, the arbitrator or arbitrators not yet appointed shall be chosen within 15 days by the arbitrator or arbitrators that were appointed in accordance with paragraph 1.

4. All arbitrators shall:

(a) have expertise or experience in law, international trade or other matters covered by this Agreement;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or receive instructions from either Party; and

(d) comply with a code of conduct, to be provided in the Rules of Procedure referred to in Article 12.15.

5. The Chair of the Arbitral Tribunal shall:

(a) not be a national of a Party;

(b) not have his or her usual place of residence in the territory of a Party;

(c) not have dealt with the matter in any capacity; and (d) not be employed by either Party.

6. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed within 15 days in accordance with the appointment procedure provided for in paragraphs 1 and 2, which shall be applied, respectively, mutatis mutandis. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended for a period beginning on the date the original arbitrator resigns or becomes unable to act. The work of the arbitral tribunal shall resume on the date the successor is appointed.

7. Each Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the Chair of an arbitral tribunal and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

Article 12.9. Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall deliberate in closed sessions. Unless otherwise agreed by the Parties, the arbitral tribunal hearings with the Parties shall be open to the public except where information designated as confidential by a Party is being discussed.

2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the initial report and responses to questions put by the arbitral tribunal, shall be made available to the other Party. Unless the disputing Parties otherwise agree, the arbitral tribunal proceedings shall be conducted in accordance with the Rules of Procedure for arbitral tribunals referred to in Article 12.15.

3. The arbitral tribunal should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

4. The arbitral tribunal shall aim to make its decisions, including its report, by consensus but may also make its decisions, including its report, by majority vote.

5. After notifying the Parties, and subject to such terms and conditions as the Parties may agree, the arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The arbitral tribunal shall provide the Parties with a copy of the information or technical advice received and an opportunity to provide comments. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

6. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

Article 12.10. Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time-frames set out in this Chapter shall be extended by the amount of time that the work was suspended. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal by jointly notifying the chair of the arbitral tribunal that a mutually agreed solution to the dispute has been found at any time before the issuance of the report to the Parties.

Article 12.11. Initial Report

1. The initial report of the arbitral tribunal shall be drafted without the presence of the Parties. The arbitral tribunal shall

base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties and may take into account any other relevant information provided to the arbitral tribunal in accordance with paragraph 5 of Article 12.9.

2. Unless the Parties otherwise agree, the arbitral tribunal shall, within 120 days, or within 60 days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its initial report. 3. The initial report shall contain:

(a) both the descriptive parts summarising the submissions and arguments of the Parties;

(b) the findings;

(c) the determination of the arbitral tribunal as to whether a disputing Party has not conformed with its obligations under this Agreement or any other determination requested in the terms of reference; and

(d) if the Parties agree, the arbitral tribunal may make recommendations for resolution of the dispute in its report.

4. The findings and determinations of the arbitral tribunal and, if applicable, any recommendations, cannot add to or diminish the rights and obligations of the Parties to the dispute provided in this Agreement.

5. In exceptional cases, if the arbitral tribunal considers it cannot release its initial report within 120 days or within 60 days in cases of urgency, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

6. Arbitrators may furnish separate opinions on matters not unanimously agreed.

7. A Party may submit written comments to the arbitral tribunal on its initial report within 15 days of the presentation of the initial report.

8. After considering any written comments on the initial report, the arbitral tribunal may reconsider its report and make any further examination it considers appropriate.

Article 12.12. Final Report

1. The arbitral tribunal shall issue its final report, within 30 days after the date of submission of the initial report. The report shall include any separate opinions on matters not unanimously agreed, not disclosing which arbitrators are associated with majority or minority opinions.

2. The final report of the arbitral tribunal shall be available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information.

3. The report of the arbitral tribunal shall be final and binding on the Parties.

Article 12.13. Implementation

1. The Party complained against shall immediately eliminate the non-conformity as determined in the report of the arbitral tribunal, or if this is not practicable, within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 45 days of the issuance of the arbitral tribunal's final report, either Party may refer the matter to an arbitral tribunal, as provided for in paragraph 7 of Article 12.14 which shall determine the reasonable period of time.

2. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity as determined in the report of the arbitral tribunal within the reasonable period of time as determined pursuant to paragraph 1, either Party may refer the matter to an arbitral tribunal as provided for in paragraph 7 of Article 12.14.

Article 12.14. Non-implementation

1. If the Party complained against notifies the complaining Party that it is impracticable to comply, or the arbitral tribunal to which the matter is referred pursuant to paragraph 2 of Article 12.13 confirms that the Party complained against has failed to eliminate the non-conformity as determined in the report of the arbitral tribunal within the reasonable period of time that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the concessions or other obligations under this Agreement, after giving 30 days advance notification of such suspension to the Party complained against. Such notification may only be given 20 days after the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitral tribunal. The suspension shall only be applied until such time as the nonconformity is fully eliminated, or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend under paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure that the arbitral tribunal has found to be inconsistent with this Agreement; and

(b) the complaining Party may suspend concessions or other benefits in other sectors if it considers that it is not practicable or effective to suspend in the same sector. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraphs 2 to 5 have not been met, it may refer the matter to an arbitral tribunal.

7. The arbitral tribunal that is established for the purposes of this Article or Article 12.13 shall, wherever possible, will have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article or Article 12.13 shall be appointed pursuant to Article 12.8. The arbitral tribunal established under this Article or Article 12.13 shall issue its report within 60 days after the date when the matter is referred to it. When the arbitral tribunal considers that it cannot issue its report within the aforementioned 60 days period, it may extend that period for a maximum of 30 days with the consent of the Parties. The report shall be available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information. The report shall be final and binding on the Parties.

Article 12.15. Rules of Procedure

The Joint Committee shall adopt the Rules of Procedure which provide for the details of the rules and procedures of arbitral tribunals established under this Chapter, upon the entry into force of this Agreement. Unless the Parties otherwise agree, the arbitral tribunal shall follow the Rules of Procedure adopted by the Joint Committee and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the rules adopted by the Joint Committee.

Article 12.16. Application and Modification of Rules and Procedures

Any time period, or other rules and procedures for arbitral tribunals provided for in this Chapter, including the Rules of Procedure referred to in Article 12.15, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

Chapter 13. General Exceptions

Article 13.1. General Exceptions

1. For the purposes of Chapters 3 to 7 (Trade in Goods, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. Nothing in this Agreement shall be construed to prevent a Party from taking action authorised by the WTO Dispute Settlement Body. A Party taking such action shall inform the Joint Committee to the fullest extent possible of measures taken and of their termination.

Article 13.2. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment; or

(iii) taken in time of war or other emergency in international relations; or

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

2. A Party taking action under subparagraphs 1(b) and (c) shall, to the extent possible, inform the Joint Committee of measures taken and of their termination.

Article 13.3. Taxation

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under the WTO Agreement.

3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any taxation agreement in force between the Parties.

4. In the event of any inconsistency relating to a taxation measure between this Agreement and any taxation agreement, the latter shall prevail.

5. In the case of any consultations between the Parties about whether an inconsistency relates to a taxation measure, the competent authorities under the taxation agreement shall have sole responsibility for resolving the case.

6. For the purposes of this Article:

(a) taxation measures do not include any "customs duties" as defined in Article 2.1 (c); and

(b) taxation agreement means the Agreement between the Government of the Republic of Chile and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, including its Protocol, or other international taxation agreement or arrangement in force between the Parties.

Article 13.4. Balance-of-payments Measures on Trade In Goods

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.

2. Any measure taken for balance-of-payments purposes shall be in accordance with that Party's rights and obligations under GATT 1994, including the Understanding on the Balance-of-Payments Provisions of the GATT 1994. When adopting such measures, the Party shall immediately consult with the other Party.

3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 13.5. Disclosure of Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement. 2. Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Chapter 14. Final Provisions

Article 14.1. Annexes and Footnotes

The annexes and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 14.2. Amendments

1. The Parties may agree, in writing, on any amendment or modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the necessary domestic legal procedures of each Party, an amendment, modification or addition shall constitute an integral part of this Agreement. Such amendment shall enter into force on a date to be agreed by the Parties.

Article 14.3. Amendment of the Wto Agreement

Unless otherwise provided in this Agreement, if any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement.

Article 14.4. General Review

The Parties may undertake a general review of the Agreement, with a view to furthering its objectives, within five years of the entry into force of this Agreement and at least every five years thereafter.

Article 14.5. Future Negotiations on Trade In Services and Investment

Unless otherwise agreed, no later than two years after the entry into force of this Agreement, the Parties shall undertake consultations with regard to the inclusion of a Chapter on Services and a Chapter on Investment to this Agreement, on a mutually advantageous basis.

Article 14.6. Future Negotiations on Financial Services

Unless otherwise agreed, no later than two years after the entry into force of this Agreement, the Parties shall commence negotiations on the question of including a separate and self–contained Chapter on Financial Services to this Agreement, on a mutually advantageous basis.

Article 14.7. Entry Into Force and Termination

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications that such procedures have been completed or after such other period as the Parties may agree.

3. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire 12 months after the date of such notification.

Article 148. Authentic Texts

This Agreement shall be done in English and Spanish languages, all being equally authentic. In case of any divergence, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective governments, have signed this Agreement.

DONE at _____, in duplicate, this ____ day of ____, 2010.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE