ECONOMIC COMPLEMENTATION AGREEMENT NO. 31 CONCLUDED BETWEEN BOLIVIA AND MEXICO

PREAMBLE

The Government of the United Mexican States and the Government of the Republic of Bolivia,

DETERMINED TO

STRENGTHEN the special ties of friendship, solidarity and cooperation between their peoples;

ACCELERATE and promote the revitalization of the American integration schemes;

STRENGTHEN the Latin American Integration Association as a center of articulation and convergence of Latin American integration schemes;

TO ACHIEVE a better balance in trade relations among its countries, taking into consideration their levels of economic development;

CONTRIBUTE to harmonious development, to the expansion of world trade and to the expansion of international cooperation;

CREATE a larger and more secure market for goods produced and services supplied in their territories; REDUCE distortions in their reciprocal trade;

ESTABLISH clear and mutually beneficial rules for their commercial exchange;

ENSURE a predictable commercial framework for the planning of productive activities and investment;

DEVELOP their respective rights and obligations under the General Agreement on Tariffs and Trade (GATT), the Treaty of Montevideo 1980, as well as other bilateral and multilateral integration and cooperation instruments;

STRENGTHEN the competitiveness of its enterprises in world markets; ENCOURAGE innovation and creativity through the protection of intellectual property rights;

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

PROTECT the fundamental rights of their workers;

UNDERTAKE all of the above in a manner consistent with the protection and conservation of the environment;

STRENGTHEN the development and enforcement of environmental laws and regulations;

PROMOTE sustainable development;

PRESERVE its capacity to safeguard the public welfare; and

ENCOURAGE the dynamic participation of the various economic agents, particularly the private sector, in efforts to deepen economic relations between the Parties and to develop and maximize the potential of their joint presence in international markets;

CONCLUDE THIS FREE TRADE AGREEMENT

In accordance with the GATT and with the character of a Partial Scope Agreement of Economic Complementation for the purposes of the Treaty of Montevideo 1980 and Resolution 2 of the Council of Ministers of Foreign Affairs of the contracting parties to that treaty.

Chapter I. Initial Provisions

Article 1-01. Objectives.

1. The objectives of this Treaty, specifically developed through its principles and rules, including those of national treatment, most-favored-nation treatment and transparency, are as follows:

a) stimulate the expansion and diversification of trade between the Parties;

b) eliminate barriers to trade and facilitate the movement of goods and services between the Parties;

c) promote conditions of fair competition in trade between the Parties; substantially increase investment opportunities in the territories of the Parties;

d) adequately and effectively protect and enforce intellectual property rights in the territory of each Party;

e) to establish guidelines for further cooperation between the Parties, as well as at the regional and multilateral levels to expand and enhance the benefits of this Agreement; and

f) create effective procedures for the implementation and enforcement of this Agreement, for its joint administration and for the settlement of disputes.

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

Article 1-02. Relationship with other Treaties and International Agreements.

1. The Parties confirm the rights and obligations in force between them under the GATT, the Treaty of Montevideo 1980, and other treaties and agreements to which they are parties.

2. In case of incompatibility between the provisions of the treaties and agreements referred to in paragraph 1 and the provisions of this Treaty, the latter shall prevail to the extent of the incompatibility.

Article 1-03. Compliance with the Treaty.

Each Party shall ensure, in accordance with its constitutional requirements, compliance with the provisions of this Agreement in its territory at the central or federal, departmental or state, and municipal levels, except as otherwise provided in this Agreement.

Article 1-04. Succession of Treaties.

Any reference to any other treaty or international agreement shall be understood to be made in the same terms to a successor treaty or agreement to which the Parties are parties.

Chapter II. General Definitions

Article 2. Definitions of General Application.

For purposes of this Agreement, unless otherwise specified, the following definitions shall apply:

customs duty: a tax, duty or import levy and charge of any kind applied in connection with the importation of goods, including any form of surcharge or additional charge on imports, except:

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

(b) a countervailing duty that is applied in accordance with the laws of each Party; (c) a duty or other charge related to the importation, proportionate to the cost of the services rendered; and

(d) a premium offered or collected on imported goods, derived from any tendering system, in respect of the administration of quantitative import restrictions or tariff-rate quotas or tariff preference quotas.

good of a Party: domestic products as understood in the GATT, such goods as the Parties may agree, and includes originating goods. A good of a Party may incorporate materials from other countries;

originating good: a good that complies with the rules of origin set out in Chapter V (Rules of Origin);

Customs Valuation Code: the agreement relating to the application of Article VII of the GATT, including its interpretative notes;

Commission: the Administrative Commission established pursuant to Article 18-01 (Administrative Commission);

countervailing duty: antidumping duties and countervailing duties or countervailing duties according to the legislation of each Party;

days: calendar or calendar days;

enterprise: any legal person constituted or organized under applicable law, whether or not for profit and whether privately or governmentally owned, as well as other organizations or economic units that are constituted or, in any case, duly organized under the law, including branches, foundations, partnerships, trusts, participations, sole proprietorships, joint ventures or other associations;

State enterprise: an enterprise owned or controlled by a Party through equity participation; enterprise of a Party: an enterprise incorporated or organized under the laws of a Party;

tariff item: the breakdown of a Harmonized System tariff classification code to more than six digits; measure: any law, regulation, procedure, administrative provision or practice, among others;

national: a natural person who has the nationality of a Party under its legislation. It shall be understood that the term also extends to persons who, in accordance with the legislation of that Party, have the status of permanent residents in the territory of that Party;

Party: any State with respect to which this Agreement has entered into force; exporting Party: the Party from whose territory a good or service is exported; importing Party: the Party into whose territory a good or service is imported;

item means a tariff classification code of the Harmonized System at the four-digit level; person: a natural person or an enterprise;

person of a Party: a national or company of a Party;

Tariff Relief Program: the program established under Article 3-04 (Tariff Relief); Secretariat: the Secretariat established pursuant to Article 18-02 (Secretariat);

Harmonized System: the Harmonized Commodity Description and Coding System, including the General Classification Rules and the Explanatory Notes thereto;

subheading: a tariff classification code of the Harmonized System at the six-digit level;

territory: for each Party, as defined in the Annex to this Article.

Annex to Article 2-01. Country-specific definitions

Unless otherwise provided, for the purposes of this Agreement, the following definitions shall apply: territory:

(a) with respect to Bolivia:

(i) the departments, provinces and cantons; (ii) the territories over which it exercises administrative control;

iii) the space located on the national territory, with the extension and modalities established by international law;

(iv) any maritime zone within which Bolivia may exercise rights over the seabed and subsoil, and over the natural resources contained therein, in accordance with international law, including the United Nations Convention on the Law of the Sea; and

v) the soil and subsoil with all its natural wealth, the lake, fluvial and medicinal waters as well as the elements and physical forces susceptible of exploitation;

b) with respect to Mexico:

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

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

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

iv) the continental shelf and the submarine sockets of the islands, cays and reefs;

v) the waters of the territorial seas, to the extent and under the terms established by international law, and the internal maritime waters; vi) the space above the territory of the Republic, to the extent and under the terms established by international law, and the internal maritime waters;

vi) the space above the national territory, to the extent and under the terms established by international law itself; and

vii) any area beyond the territorial seas of Mexico within which Mexico may exercise rights over the seabed and subsoil and over the natural resources contained therein, in accordance with international law, including the United Nations Convention on the Law of the Sea, as well as with its domestic legislation.

Chapter III. National Treatment and Market Access for Goods

Section A. Scope of Application and National Treatment

Article 3-01. Scope of Application.

This Chapter applies to trade in goods between the Parties, except as otherwise provided in this Agreement.

Article 3-02. National Treatment.

1. Each Party shall accord national treatment to goods of the other Party in accordance with Article III of the GATT, including its interpretative notes. For this purpose, Article Ill of the GATT and its interpretative notes are incorporated into this Agreement and are an integral part thereof.

2. The provisions of paragraph 1 mean, with respect to a state or department, including local governments, treatment no less favorable than the most favorable treatment accorded by that state or department to any like goods, direct competitors or substitutes, as the case may be, of the Party of which they are members.

3. Paragraphs 1 and 2 do not apply to the measures set out in the Annex to Articles 3-02 and 3-08.

Section B. Customs Duties

Article 3-03. Tariff Relief.

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

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods as set out in the Annex to this Article.

3. Except as otherwise provided in this Agreement, this Agreement incorporates tariff preferences previously negotiated or granted between the Parties in the framework of LAIA, as reflected in the Tariff Dismantling Schedule. As of the entry into force of this Agreement, such preferences shall cease to have effect.

4. At the request of either Party, the Parties shall hold consultations to examine the possibility of accelerating the elimination of customs duties as provided for in the Tariff Discharge Schedule.

5. Once approved by the Parties, in accordance with their applicable legal procedures, the agreement on an originating good reached between the Parties under paragraph 4 shall prevail over any customs duties or categories of relief identified under the Tariff Relief Program for that good.

(1) Paragraph 1 is not intended to prevent a Party from modifying its customs duties on originating goods. Where preferential tariff treatment under the Tariff Relief Program is not claimed for such goods. Paragraph 1 does not prohibit a Party from increasing a customs duty to a level no higher than that set outin the Tariff Discharge Schedule, where that customs duty had previously been unilaterally reduced to a level lower

than that set out in the Tariff Discharge Schedule Paragraphs 1 and 2 do not prohibit a Party from increasing a customs duty, where such increase is authorized as a result of a dispute settlement procedure under the GATT. Paragraph 1 is notintended to prevent a Party from creating a new tariffbreakdown, provided that the customs duty applicable to the originating goods concerned is not higher than that applicable to the tariff item being broken down.

Article 3-04. Restrictions on Duty Drawback on Exported Goods and Duty Deferral or Suspension Programs.

1. For the purposes of this Article, the following definitions shall apply:

customs duties: the duties that would be applicable to a good that is imported for consumption in the customs territory of a Party if the good were not exported to the territory of the other Party;

fungible goods: fungible goods as defined in Chapter V (Rules of Origin);

identical or similar goods: goods that are alike in all respects, including physical characteristics, quality and commercial prestige, as well as goods which, although not alike in all respects, have similar characteristics and composition, enabling them to perform the same functions and to be commercially interchangeable;

material: a material as defined in Chapter V (Rules of Origin);

tariff deferral or suspension programs: measures governing free or duty-free zones, temporary imports under bond, temporary imports for export, bonded warehouses, maquiladora and other export processing programs, among others.

2. No Party may refund the amount of customs duties paid, or waive, suspend or reduce the amount of customs duties owed, with respect to a good imported into its territory that is:

(a) used as a material in the production of another good subsequently exported to the territory of the other Party; or

(b) replaced by an identical or similar good used as a material in the production of another good subsequently exported to the territory of the other Party;

in an amount that exceeds the total customs duties paid or owed on that quantity of that imported good that is materially incorporated into the good exported to the territory of the other Party, or replaced by identical or similar goods materially incorporated into the good exported to the territory of the other Party, with an appropriate allowance for waste.

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

(a) countervailing duties applied in accordance with the Party's legislation;

(b) premiums offered or collected on imported goods under any tendering system relating to the application of quantitative import restrictions, tariff-rate quotas, or tariff preference quotas; or

(c) customs duties paid or owed in respect of a good imported into its territory and replaced by an identical or similar good that is subsequently exported to the territory of the other Party.

4. Except as otherwise provided in this Article, as of the date and in the circumstances set out in paragraphs 7 and 8, no Party may refund the amount of customs duties paid, or waive, suspend or reduce the amount of customs duties owed, with respect to a good imported into its territory, provided that the good is:

(a) used as a material in the production of an originating good subsequently exported to the territory of the other Party; or

(b) replaced by an identical or similar good used as a material in the production of an originating good subsequently exported to the territory of the other Party.

5. Effective on the date and in the circumstances set out in paragraphs 7 and 8, where a good is imported into the territory of a Party pursuant to a tariff deferral or suspension program and any of the conditions set out in paragraph 4(a) and (b) are met, the Party from whose territory the good was exported shall:

(a) determine the amount of customs duties as if the exported good had been destined for domestic consumption; and

(b) within 60 days of the date of exportation, collect the amount of customs duties as if the exported good had been destined for domestic consumption.

6. Paragraphs 3 through 5 do not apply to:

(a) a good that, under the law of each Party, is imported under bond or guarantee to be transported and exported to the territory of the other Party;

(b) a good that is exported to the territory of a Party in the same condition in which it was imported into the territory of the Party from which it is exported. Processes such as testing, cleaning, repackaging, inspection or preservation of the good in the same condition shall not be considered as changes in the condition of the good. Where a good has been commingled with fungible goods and exported in the same condition, its origin, for the purposes of this paragraph, may be determined on the basis of the inventory methods set out in Chapter V (Rules of Origin);

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

(i) its shipment to a store free of customs duty; or (ii) shipment to stores on board vessels or as supplies for vessels or aircraft;

(c) a refund by a Party of customs duties paid on a specific good imported into its territory and subsequently exported to the territory of the other Party, where such refund is granted on the grounds that the good does not correspond to the samples or specifications of the good that was intended to be imported, or on account of the shipment of that good without the consent of the consignee; or

(d) an originating good imported into the territory of a Party that is subsequently exported to the territory of the other Party, or used as a material in the production of another good subsequently exported to the territory of the other Party, or replaced by an identical or similar good used as a material in the production of another good subsequently exported to the territory of the other Party.

7. Subject to paragraph 8, paragraphs 4 and 5 shall apply:

(a) from the time that Bolivia applies to a non-Party provisions similar to those contained in those paragraphs; or

(b) for three years, with respect to a good imported into the territory of a Party that meets the conditions in subparagraphs (a) and (b) of paragraph 4, where it is demonstrated that the refund, exemption, suspension, or reduction of customs duties simultaneously

(i) creates a significant distortion of the general tariff treatment applied by the Party granting the refund, exemption, suspension or reduction of customs duties in favor of the export of goods from the territory of that Party; and

(ii) Causes injury or threat of injury to a domestic industry producing identical, like or directly competitive goods of the other Party.

8. In no case shall paragraphs 4 and 5 apply before the eighth year of the Treaty's entry into force.

9. For purposes of paragraph 7, the existence of a significant distortion of the general tariff treatment applied by a Party granting a refund, exemption, suspension or reduction of duties in favor of the export of goods from the territory of that Party shall be presumed to exist when:

(a) the amount of duties refunded, exempted, suspended or reduced on goods imported into the territory of that Party that satisfy the conditions set out in subparagraphs (a) and (b) of paragraph (4) exceeds 5 percent of the total value of imports, during a year, of originating goods provided for in a tariff item of the Party to whose territory those originating goods are exported; or

(b) a Party refunds, exempts, suspends or reduces customs duties on goods or materials imported from the territory of a non-Party on the importation of which it maintains quantitative restrictions, and those goods or materials are subsequently exported to the other Party, used in the production of goods subsequently exported to the other Party, or replaced by identical or similar materials used in the production of goods subsequently exported to the other Party.

10. A Party that refunds, exempts, suspends or reduces customs duties shall, on request of the other Party, provide the information required to verify the existence of the conditions set out in paragraph 7, including with respect to each and every import on which it grants refunds, exemptions, suspensions or reductions of customs duties with respect to a good exported to the territory of the other Party.

11. For purposes of paragraph 7, the following definitions shall apply:

(a) threat of injury means clearly imminent injury, based on the facts and not merely on allegation, conjecture or remote

possibility;

(b) "injury" means a significant impairment of a domestic industry; and

(c) domestic industry: the producer or producers of identical or similar goods or direct competitors operating within the territory of a Party.

12. Each Party shall establish clear and strict procedures for the application of paragraphs 4 and 5, in accordance with the following:

(a) the Party that decides to initiate an investigation to implement paragraphs 4 and 5 shall publish the initiation of the investigation in the appropriate official organs of dissemination and shall notify the exporting Party in writing on the day following publication;

(b) for purposes of determining significant distortion and injury or threat of injury under paragraph 7(b)(i) and (ii), the competent authorities shall evaluate all factors of an objective and quantifiable nature;

(c) in determining the application of paragraphs 4 and 5, a direct causal link shall also be demonstrated between the reimbursement, exemption, suspension or reduction of customs duties, and the distortion and injury or threat of injury to the domestic industry;

(d) if as a result of this investigation the competent authority determines, on the basis of objective evidence, that the conditions set forth in this Article are met, the importing Party may initiate consultations with the other Party;

(e) the consultation procedure shall not oblige the Parties to disclose information that has been provided on a confidential basis, the disclosure of which would impede compliance with the laws of the Party governing the matter or would prejudice commercial interests;

(f) the period of prior consultations shall begin on the day following receipt by the exporting Party of the notification of the request to initiate consultations. The period of prior consultations shall be 60 days, unless the Parties agree on a shorter period;

(g) the notification referred to in subparagraph f) shall be made through the competent authority and shall contain sufficient background information to support the application of paragraphs 4 and 5, including:

(h) the names and addresses of the domestic producers of identical, similar or directly competitive goods that are representative of the domestic industry, their share in the domestic production of that good and the reasons that lead them to claim that they are representative of that sector;

(iii) a clear and complete description of the good subject to the proceeding, the tariff subheading under which it is classified and the tariff treatment in force, as well as the description of the identical, similar or direct competitor good;

(iv) import data for each of the last three years that constitute the basis that such good is being imported in increasing quantities, either in absolute terms, or relative to domestic production;

(v) data on the total domestic production of the identical, similar or directly competitive good for the last three years; and

(vi) data showing injury or threat of injury caused by imports of the good in question in accordance with subparagraphs (b) and (c);

(i) the application of paragraphs 4 and 5 may only be adopted after the conclusion of the prior consultation period;

(j) during the consultation period the exporting Party shall make any comments it considers relevant;

(k) the exporting Party shall apply paragraphs 4 and 5 at the conclusion of the consultation period under subparagraph (f) if any of the circumstances set out in paragraph 7 are found to exist; and

(l) in the event that the exporting Party does not apply paragraphs 4 and 5 under subparagraph (j), the importing Party shall have the right to withdraw the preferential tariff treatment provided for in this Agreement for that good.

13. The Parties shall consult annually on the implementation of this Article.

Article 3-05. Customs Valuation.

1. The customs value of an imported good shall be determined in accordance with the principles of the Customs Valuation

Code.

2. The dutiable base on which customs duties shall be applied to goods imported from the other Party shall not be the value of a good produced in the territory of the importing Party, nor an arbitrary or fictitious value.

Article 3-06. Temporary Importation of Goods.

1. For purposes of this Article, the following definitions shall apply:

goods imported for sporting purposes: sporting equipment for use in competitions, sporting events or training in the territory of the Party into which it is imported;

goods for exhibition or demonstration purposes: goods for exhibition or demonstration purposes, including components, auxiliary apparatus and accessories;

advertising films: recorded visual media, with or without sound, consisting essentially of images showing the nature or functioning of goods or services offered for sale or rental by a person established or resident in the territory of a Party, provided that the films are suitable for exhibition to potential customers, but not for dissemination to the general public; and are imported in packages each containing not more than one copy of each film, and are not part of a larger consignment.

2. Each Party shall authorize the temporary importation without payment of customs duty of at least the following goods that are imported from the territory of the other Party, regardless of their origin and regardless of whether similar goods, direct competitors or substitutes are available in the territory of the Party:

(a) professional equipment necessary for the exercise of the activity, trade or profession of a business person;

(b) press equipment or equipment for the broadcasting of radio or television signals and cinematographic equipment;

(c) goods imported for sporting purposes, or for exhibition or demonstration; and d) commercial samples and advertising films.

3. Except as otherwise provided in this Agreement, the Parties may subject the temporary importation without payment of customs duty of a good of the type referred to in subparagraphs (a), (b) or (c) of paragraph 2 to any of the following conditions, provided that no additional conditions may be adopted:

(a) the good is imported by a person of the other Party or its representative;

(b) the good is used exclusively by the person or by his representative, or under his personal supervision, in the course of his trade, craft or profession;

(c) that the good is not sold, leased or otherwise disposed of while it remains in its territory;

(d) that the good is accompanied by a bond not exceeding 110% of the charges that would be due, if any, for entry or final importation, or the other form of security, refundable at the time of exportation of the good, except that no bond may be required for customs duties on an originating good;

(e) that the good is capable of identification when exported;

(f) that the good is exported upon departure of the person or his representative, or within a period of time reasonably corresponding to the purpose of the temporary importation;

(g) that the good is imported in quantities not greater than is reasonable in accordance with its intended use; and

(h) that the good is re-exported in the same condition in which it was imported.

4. Except as otherwise provided in this Agreement, the Parties may make the temporary importation without payment of customs duty of a good of the type referred to in paragraph 2(d) subject to any of the following conditions, provided that no additional conditions may be adopted:

(a) the good is imported only for the purpose of lifting orders for goods or services to be supplied from the territory of the other Party or from another non-Party;

(b) the good is not for sale or lease and is used only for demonstration or exhibition while remaining in its territory;

(c) the good is capable of identification when exported;

(d) the good is exported within a period of time reasonably corresponding to the purpose of the temporary importation;

(e) that the good is imported in quantities not greater than is reasonable in accordance with its intended use; and

(f) the good is accompanied by a bond not exceeding 110% of the charges, if any, that would be due on entry or final importation, or such other form of security, refundable upon exportation of the good, except that no bond may be required for customs duties on an originating good.

5. Where a good that is temporarily imported fails to meet any of the conditions that a Party imposes under paragraphs 3 and 4, that Party may apply the customs duties and any other charges that would be due on the entry or final importation of the good.

Article 3-07. Duty-Free Importation for Samples of No Commercial Value.

For the purposes of this article, samples of no commercial value shall be understood to mean goods representative of a class of goods already produced or a model the production of which is planned. It does not include identical goods imported by the same person or sent to a single consignee, in such quantity that, taken as a whole, they constitute an ordinary import subject to the payment of customs duties.

2. Each Party shall authorize the importation free of customs duty of samples of no commercial value from the territory of the other Party.

Section C. Non-Tariff Measures

Article 3-08. Import and Export Restrictions.

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except as provided in Article XI of the GATT, including its interpretative notes. For this purpose, Article XI of the GATT and its interpretative notes are incorporated into and made an integral part of this Agreement.

2. The Parties understand that the GATT rights and obligations embodied in paragraph 1 prohibit, in all circumstances in which any other type of restriction is prohibited, the establishment of minimum export and import prices, except as permitted for the application of sanctions and countervailing duty commitments.

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

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

(b) requiring as a condition for the exportation of such goods from the Party to the territory of the other Party that the goods not be re-exported to the non-Party, directly or indirectly, without being processed or manufactured in the territory of the other Party in a manner that results in a substantial change in the value, form or use of the goods, or in the production of another good.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, at the request of either Party, the Parties shall consult with a view to preventing the measure from interfering with or causing undue distortions in the pricing, marketing and distribution mechanisms in the other Party.

5. Paragraphs 1 through 4 do not apply to the measures set out in the Annex to Articles 3-02 and 3-08.

Article 3-09. Customs Duties.

1. No Party shall levy customs duties on originating goods for the service provided by customs.

2. The Parties shall be subject to the provisions of the Annex to this Article.

Article 3-10. Export Taxes.

1. Except as provided in this Article, no Party shall adopt or maintain any tax, levy or charge on the exportation of a good to the territory of the other Party, unless such taxes, levies or charges are also adopted or maintained on that good when it is destined for domestic consumption.

2. Each Party may maintain or adopt a tax, levy or other charge on the export of the basic foodstuffs listed in paragraph 3, on their ingredients, or on the goods from which those foodstuffs are derived, if that tax, levy or charge is used:

(a) to ensure that the benefits of a domestic food assistance program involving such foodstuffs are received only by consumers in the Party applying that program; or

(b) to ensure the availability of sufficient quantities of the foodstuffs intended for domestic consumers, or sufficient quantities of their ingredients or of the goods from which such foodstuffs are derived, to a domestic processing industry when the domestic price of such foodstuffs is held below the world price as part of a government stabilization program, provided that such taxes, levies or charges do not have the effect of increasing the protection afforded to the domestic industry and are maintained only for the period necessary to preserve the integrity of such program.

3. For purposes of paragraph 2, "basic foodstuffs" means:

Vegetable oil

Rice

Canned tuna White sugar Brown sugar

Beef steak or pulp Soluble coffee Roasted coffee Ground beef

Beer

Packaged chili Chocolate powder Chicken concentrate Beans

Popular sweet cookies Crackers

Jellies

Corn flour

Wheat flour

Beef liver

Oat flakes

Egg

Cooked ham

Condensed milk Powdered milk Powdered milk for children Evaporated milk Pasteurized milk Vegetable shortening Margarine

Corn dough

White bread

Boxed bread

Soup pasta

Tomato puree Bottled soft drinks Bone-in slices

Salt

Canned sardines Corn tortilla

4. Notwithstanding paragraph 1, each Party may adopt or maintain a tax, levy or charge on the export of any foodstuff to the territory of the other Party if that tax, levy or charge is applied temporarily to alleviate a critical shortage of that foodstuff. For purposes of this paragraph, "temporarily" means up to one year, or such longer period as the Parties may agree.

5. Paragraph 1 does not apply to the measures set out in the Annex to this Article.

Article 3-11. Country of Origin Marking.

The Annex to this Article applies to measures related to country of origin marking.

Article 3-12. Distinctive Products.

The annex to this article applies to the products indicated therein.

Section D. Publication and Notification

Article 3-13. Publication and Notification.

1. Each Party shall promptly publish and notify the laws, regulations, procedures and administrative provisions of general application that it has brought into force and that relate to the classification, valuation or customs valuation of goods, to rates of customs duties, taxes or other charges or to import or export measures, restrictions or prohibitions, or the transfer of payments relating thereto, or to the sale, distribution, transportation, insurance, storage, inspection, exhibition, processing, mixing or other use of such goods, so that governments and interested traders or persons of the other Party may be aware of them. Each Party shall also publish agreements relating to international trade policy and in force between the government or a government agency of that Party and the government or a government agency of the other Party.

2. No Party shall apply prior to their official publication any measure of a general nature adopted by that Party that has the effect of increasing a customs duty or other charge on the importation of goods of the other Party under established and uniform usage, or that imposes a new or more burdensome measure, restriction or prohibition on imports of goods of the other Party or on transfers of funds relating thereto.

3. Each Party shall identify in terms of the tariff items and nomenclature corresponding to them according to their respective tariffs, the measures, restrictions or prohibitions on the importation or exportation of goods for reasons of national security, public health, preservation of flora or fauna, preservation of the environment, plant and animal health, standards, labels, international commitments, public order requirements or any other regulations.

Section E. Provisions on Textile Goods.

Article 3-14. Temporary Flexibility Levels for Certain Goods Classified In Chapters 51 Through 63 of the Harmonized System.

1. Each Party shall accord to certain goods classified in Chapters 51 through 63 of the Harmonized System, produced in the territory of the other Party in accordance with the provisions of paragraph 2 and imported into its territory, the preferential tariff treatment provided for in the Tariff Discharge Schedule for originating goods, in accordance with the amounts and dates set out in the Annex to this Article.

2. For purposes of this Article:

(a) yarns and threads classified in headings 51.06 through 51.10, 52.04 through 52.07, 53.07 through 53.08, and 55.08 through 55.11 of the Harmonized System shall be wholly produced in the territory of the exporting Party from non-originating fiber;

b) goods classified in headings 54.01 through 54.06 of the Harmonized System shall be wholly produced in the territory of the exporting Party from non-originating materials;

c) fabrics classified in headings 51.11 through 51.13, 52.08 through 52.12, 53.10 through 53.11, 54.07 through 54.08, 55.12 through 55.16 and 60.01 through 60.02 of the Harmonized System must be wholly knitted or woven in the territory of the exporting Party from non-originating yarn or thread;

d) textile goods classified in Chapters 56 through 59 of the Harmonized System must be wholly produced in the territory of the exporting Party from non-originating fabric, yarn or thread; and

e) apparel and other manufactured goods classified in Chapters 61 through 63 of the Harmonized System shall be wholly cut or knit to shape, and sewn or otherwise assembled in the territory of the exporting Party from non-originating fabric, yarn or thread.

3. The total annual amounts set out in the Annex to this Article may not be allocated to goods classified in a given heading in an amount exceeding 20% of the total annual amount.

4. Beginning January 15, 1999, each Party shall grant preferential tariff treatment only to originating goods classified in

Chapters 50 through 63 of the Harmonized System.

5. With respect to the importation of goods in excess of the amounts set out in the Annex to this Article, each Party shall grant preferential tariff treatment under the Tariff Discharge Program only if they comply with the corresponding rule of origin set out in the Annex to Article 5-03 (Specific Rules of Origin).

Chapter IV. Agricultural Sector and Animal and Plant Health Measures

Section A. Agricultural Sector

Article 4-01. Definitions.

For the purposes of this section, the following definitions shall apply:

agricultural good: a good classified in any of the following chapters, headings or subheadings of the Harmonized System:

(Descriptions are provided for reference purposes).

Chapter 01 to 24 (except fish and fish products)

subheading 2905.43 mannitol

subheading 2905.44 sorbitol

subheading 2918.14 citric acid

subheading 2918.15 citric acid salts and esters

subheading 2936.27 vitamin C and its derivatives

heading 33.01 essential oils

headings 35.01 to 35.05 |albuminoid materials, modified starch products, modified starch-based products subheading 3809.10 finishing and finishing products

subheading 3823.60 sorbitol n.o.s.

headings 41.01 to 41.03 hides and skins

heading 43.01 raw furskin

headings 50.01 to 50.03 raw silk and silk waste

headings 51.01 to 51.03 |wool and hair

headings 52.01 to 52.03 |seed cotton, cotton waste and carded or combed cotton heading 53.01 raw linen

item 53.02 raw hemp

fish and fish products: fish, crustaceans, mollusks or any other aquatic invertebrates, marine mammals and their derivatives, classified in any of the following chapters, headings or subheadings of the Harmonized System:

(Descriptions are provided for reference purposes).

Chapter 03 Fish and Crustaceans, Mollusks and other Aquatic Invertebrates

item 05.07 ivory, tortoise shell, marine mammals, horns, antlers, hooves, hoofs, claws, claws and beaks, and their products

item 05.08 coral and similar products

item 05.09 natural sponges of animal origin

item 05.11 products of fish or crustaceans, molluscs or any other marine invertebrate; dead animals of Chapter 03

item 15.04 fats or oils and their fractions, from fish or marine mammals

item 16.03 non-meat extracts and juices

item 16.04 fish preparations or canned fish

item 16.05 prepared or preserved crustaceans or mollusks and other marine invertebrates

subheading 2301.20 meal, feed, fish pellets

Export subsidies:

(a) the granting of direct export subsidies, including payments in kind, by governments or public agencies, to an enterprise, an industry, producers of an agricultural good, a cooperative or other association of such producers, or a marketing board;

(b) the sale or placement for export of non-commercial stocks of agricultural goods by governments or public bodies at a price lower than the comparable price charged to purchasers in the domestic market for a similar agricultural good;

(c) payments for the export of agricultural goods financed by virtue of governmental action, whether or not involving a charge on government accounts, including payments financed out of the proceeds of a levy imposed on the agricultural good in question or on an agricultural good from which the exported agricultural good is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural goods (other than readily available export promotion and advisory services), including handling, processing and other processing costs, and international transportation and freight costs;

(e) internal transportation and freight costs for export shipments established or imposed by governments on terms more favorable than for domestic shipments;

(f) subsidies on agricultural goods contingent upon their incorporation into exported goods.

Article 4-02. Scope of Application.

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

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

Article 4-03. International Obligations.

A Party, before adopting a measure under an intergovernmental agreement on goods under Article XX(h) of the GATT that may affect trade in an agricultural good between the Parties, shall consult with the other Party to avoid nullifying or impairing a concession granted by that Party in its Schedule to the Tariff Break Schedule.

Article 4-04. Market Access.

1. The Parties shall facilitate access to their respective markets by reducing or eliminating barriers to trade in agricultural goods and shall not establish new barriers to trade between them.

2. The Parties waive their rights under Article X1:2(c) of the GATT and those rights embodied in Article 3-07 (Import and Export Restrictions) with respect to any measure adopted or maintained on the importation of agricultural goods.

3. On or after the date of entry into force of this Agreement, no Party may refund the amount of customs duties paid, or waive, suspend or reduce the amount of customs duties owed, on any agricultural good imported into its territory that is:

(a) substituted by an identical or similar agricultural good subsequently exported to the territory of the other Party; or

(b) replaced by an identical or similar agricultural good used as a material in the production of another good subsequently exported to the territory of the other Party.

4. Notwithstanding any other provision of this Agreement, with respect to the agricultural goods listed in the Annex to this Article, any Party may maintain or adopt a prohibition or restriction, or a customs duty on the importation of such goods, in accordance with its rights and obligations under the GATT. Once a year after the entry into force of this Agreement, the Parties shall examine, through the Working Group on Agricultural Trade established under Article 4-08, the possibility of incorporating into a trade liberalization program the agricultural goods contained in that Annex.

5. Once the Parties have adopted the resolutions of the Working Group formulated under the terms of paragraph 4 for an originating agricultural good set out in the Annex to this Article, in accordance with their applicable legal procedures, that resolution shall prevail over the provisions of this Agreement for that good.

6. Where a Party applies a rate of duty to an agricultural good described in the Tariff Break Schedule that is higher than the rate specified for that good in its GATT Schedule of Tariff Concessions as of January 1, 1994, the other Party shall waive its rights under the GATT and its interpretative notes with respect to the application of the rate of duty set out in that schedule.

7. Where, under an agreement resulting from multilateral negotiations on agricultural trade under the GATT, a Party agrees to convert a prohibition or restriction on its imports of an agricultural good into a tariff rate or a customs duty, that Party may not apply to the other Party on that good, a tariff rate that is higher than the lesser of the over-quota tariff rate or the customs duty rate established in that agreement under the GATT and the tariff rate set out in its schedule contained in the Tariff Discharge Schedule.

Article 4-05. Domestic Support.

1. The Parties recognize that domestic support measures may be of vital importance to their agricultural sectors, but that they may also distort trade and affect production. In this regard, the Parties shall apply domestic support as provided for in the multilateral agricultural negotiations under the GATT and, where a Party decides to support its agricultural producers, it shall endeavor to move towards domestic support policies that:

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

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

2. The Parties also recognize that either Party may modify at its discretion its domestic support measures, including those that may be subject to reduction commitments, in accordance with its rights and obligations under the GATT.

Article 4-06. Export Subsidies.

1. The Parties share the objective of achieving the multilateral elimination of export subsidies on agricultural goods. In this regard, they shall cooperate in the effort to reach an agreement within the framework of the GATT.

2. No Party may maintain or introduce export subsidies on agricultural goods in its reciprocal trade after the entry into force of this Agreement. Likewise, the Parties waive their rights under the GATT to use export subsidies and any rights with respect to the use of such subsidies that may result from multilateral negotiations on agricultural trade under the GATT in their reciprocal trade.

3. Notwithstanding the provisions of paragraph 2, if at the request of the importing Party, the Parties agree on an export subsidy on an agricultural good to the territory of the importing Party, the exporting Party may adopt or maintain such subsidy.

Article 4-07. Agricultural Technical and Marketing Standards.

1. Without prejudice to the provisions of Chapter XIII (Standardization Measures), the Parties establish the Subworking Group on Agricultural Technical and Marketing Standards, composed of representatives of each Party, which shall meet annually or as otherwise agreed. This Subgroup shall review the operation of agricultural grading and quality standards affecting trade between the Parties and resolve issues that may arise in connection with the operation of such standards. The Subgroup shall report its activities to the Agricultural Trade Working Group established under Article 4-08.

2. Where a Party applies a technical or marketing standard with respect to the packaging, grade, quality and size of an agricultural good, that Party shall accord to an identical agricultural good originating in the other Party treatment no less favorable than that accorded to its identical agricultural goods with respect to the application of those standards.

Article 4-08. Agricultural Trade Working Group.

1. The Parties establish the Agricultural Trade Working Group, composed of representatives of each Party, which shall meet at least once a year and as agreed.

2. The functions of the Working Group include:

(a) monitoring and promoting cooperation to implement and administer this Section;

(b) establishing a forum for the Parties to consult on matters related to this Section; and

(c) submitting an annual report to the Commission on the implementation of this section.

Section B. Animal and Phytosanitary and Phytosanitary Measures

Article 4-09. Definitions.

For the purposes of this section, the following definitions shall apply:

animal: any animal, including fish and wildlife;

contaminant: any pollutant, including residues of pesticides, fertilizers and chemicals used in agriculture, as well as veterinary drugs and other foreign substances;

risk assessment: assessment of:

(a) the probability of entry, establishment and spread of a pest or disease and the potential biological, agronomic and economic consequences; or

(b) the likelihood of adverse effects on human, animal or plant life or health arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a commodity;

scientific information: data or information derived from the use of scientific principles or methods;

animal or phytosanitary measure: a measure, including an end-product criterion; a process or production method directly related to the product; a test, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a risk assessment method; a packaging and labeling requirement directly related to food safety; and a quarantine regime, such as a relevant requirement associated with the transport of animals or plants, or with material necessary for their survival during transport; that a Party adopts, maintains or applies in its territory to:

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

(b) protect human, animal or plant life or health from risks arising from the presence of an additive, contaminant, toxin or pathogenic organism in a good;

(c) to protect human life or health from risks arising from a disease-causing organism, or from a pest carried by a good; or

(d) prevent or limit other damage from the introduction, establishment and spread of a pest or disease;

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

international standard, guideline or recommendation: any of these established:

(a) in relation to food safety, by the Codex Alimentarius Commission, including that established by the Codex Alimentarius Committee on Fish and Fishery Products, relating to product decomposition, additives, contaminants, hygienic practices, and methods of analysis and sampling; (b) in relation to animal health, by the Codex Alimentarius Commission, including that established by the Codex Alimentarius Committee on Fish and Fishery Products, relating to product decomposition, additives, contaminants, hygienic practices, and methods of analysis and sampling;

(b) in relation to animal health and zoonoses, under the auspices of the Office International des Epizooties;

(c) in relation to plant health, under the auspices of the Secretariat of the International Plant Protection Convention; or

(d) by other international organizations to which the Parties are parties;

pest: any pest including weeds or any infectious substance that may directly or indirectly injure or cause disease to terminal plants or parts thereof and other processed or manufactured goods;

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

(a) to approve the use of an additive for a defined purpose or under defined conditions; or

(b) establish a tolerance for a contaminant for a defined purpose or under defined conditions;

in a food, beverage or feedstuff, prior to permitting its use or marketing when any of these contain the additive or contaminant;

control or inspection procedure: any procedure used, directly or indirectly, to determine compliance with an animal or plant health measure, including sampling, testing, inspection, verification, monitoring, auditing, conformity assessment, accreditation, registration, certification, or other procedures involving the physical examination of a good, its packaging, or equipment or facilities directly related to the production, marketing, or use of a good, but does not mean an approval procedure;

good: an animal, plant or its products and by-products;

plant: any plant, including wild flora;

zone: a country, part of a country, parts of several countries or all parts of several countries;

area of low pest or disease prevalence: an area in which a specific pest or disease occurs at low levels; pest or disease free area: an area in which a specific pest or disease is not present.

Article 4-10. Scope of Application.

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of animal and plant health measures, the provisions of this Section apply to any such measures that may directly or indirectly affect trade between the Parties.

Article 4-11. Principal Rights and Obligations.

Right to Adopt Animal and Plant Health Measures

1. Each Party may, in accordance with this Section, adopt, maintain or apply any animal or plant health or sanitary measure necessary for the protection of human, animal or plant life or health in its territory, even if it is stricter than an international standard, guideline or recommendation.

Right to Set the Level of Protection

2. Notwithstanding any other provision of this Section, each Party may set its appropriate levels of protection, in accordance with Article 4-14, to protect human, animal or plant life or health.

Scientific Principles

3. Each Party shall ensure that any animal or plant health measure it adopts, maintains or applies:

(a) is based on scientific principles, taking into account, where appropriate, relevant factors, such as different geographical conditions;

(b) is maintained only when there is a scientific basis to support it; and

(c) is based on a risk assessment appropriate to the circumstances. Non-discriminatory treatment

4. Each Party shall ensure that where identical or similar conditions exist, an animal or plant health measure it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of the other Party, or between goods of the other Party and like goods of any other country.

Unnecessary Obstacles

5. No Party shall adopt, maintain or apply animal health or phytosanitary measures that have the purpose or effect of creating unnecessary obstacles to trade between the Parties. In this regard, animal and phytosanitary measures shall not be more trade-restrictive than necessary to achieve the appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any animal health or phytosanitary measure that has the purpose or the effect of creating a disguised restriction on trade between the Parties.

Support in non-governmental bodies

7. Each Party shall ensure that any non-governmental body on which it relies for the application of an animal or plant health measure acts in a manner consistent with this Section.

Article 4-12. International Standards and Standardizing Bodies.

1. Without reducing the appropriate level of animal and plant health protection, each Party shall use, as a basis for its animal or plant health measures, relevant international standards, guidelines or recommendations in order, inter alia, to make its animal or plant health measures equivalent or, where appropriate, identical to those of the other Party.

2. An animal or plant health measure of a Party that conforms to an international standard, guideline or recommendation shall be presumed to be consistent with paragraphs 4 and 5 of Article 4-10. An animal or plant health measure that provides a different level of protection from that which would be achieved by a measure based on an international standard, guideline or recommendation shall not, on that basis alone, be considered inconsistent with the provisions of this Section.

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

4. Where a Party has reason to believe that an animal or plant health measure of the other Party adversely affects or may adversely affect its exports and the measure is not based on relevant international standards, guidelines or recommendations, it may request to be informed of the reasons for the measure and the other Party shall do so in writing.

5. Each Party shall participate, to the fullest extent possible, in relevant international standardizing organizations, including the Codex Alimentarius Commission, the Office International des Epizooties and the International Plant Protection Convention, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

Article 4-13. Equivalence.

1. Without reducing the appropriate level of animal or plant health protection, the Parties shall, to the greatest extent possible and in accordance with this Section, seek equivalence of their respective measures.

2. The importing Party shall:

(a) shall treat an animal or plant health measure adopted or maintained by the exporting Party as equivalent to one of its own, where the exporting Party, in cooperation with the importing Party, provides it with scientific or other information, in accordance with risk assessment methods agreed by them, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;

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

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

3. For the purpose of establishing equivalence between animal and plant health measures, the exporting Party shall, at the request of the importing Party, adopt such reasonable procedures as may be available to it to facilitate access to its territory for inspection, testing and other relevant resources.

4. In developing an animal or plant health measure, each Party shall consider the relevant existing or proposed animal or plant health measures of the other Party.

Article 4-14. Risk Assessment and Appropriate Level of Animal and Plant Health Protection.

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

(a) relevant risk assessment methods and techniques developed by international standardizing organizations;

(b) available scientific and technical information;

(c) relevant process and production methods;

(d) relevant inspection, sampling and testing methods;

(e) the existence of pests or diseases to be taken into account, including the existence of pest or disease free areas and areas of low pest or disease prevalence;

(f) ecological and other environmental conditions to be considered; or (g) relevant applicable treatments to the satisfaction of the importing Party, such as quarantines.

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

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

(b) the costs of controlling or eradicating the pest or disease in its territory; and

(c) the cost-effectiveness of other options to limit the risks.

3. Each Party shall, in establishing its appropriate levels of animal and plant health protection:

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

(b) avoid making distinctions, under different circumstances, that may result in arbitrary or unjustifiable discrimination against a good of the other Party or constitute a disguised restriction on trade between the Parties, with the objective of achieving consistency in those levels of protection.

4. Notwithstanding paragraphs 1 through 3 and paragraph 3(c) of Article 4-10, where a Party conducts a risk assessment and concludes that the available information, including scientific information, is insufficient to complete the assessment, it may adopt a provisional animal or plant health measure, based on available relevant information, including information from international standardizing organizations and the other Party's animal or plant health measures. Once it has sufficient information to complete the risk assessment, the Party shall, within a reasonable period of time, review and, where appropriate, modify the provisional animal or phytosanitary measure in the light of that assessment.

5. Where a Party is able to achieve its appropriate level of protection through the gradual application of an animal or plant health measure, it may, on request of the other Party and in accordance with this Section, allow such gradual application or grant specific exemptions for the measure, for limited periods, taking into account the export interests of the requesting Party.

Article 4-15. Adaptation to Regional Conditions.

1. Each Party shall adapt any of its animal or plant health measures related to the introduction, establishment or spread of a pest or disease to the animal or plant health characteristics of the area where a good subject to that measure is produced and the area in its territory to which the good is destined, taking into account any relevant conditions, including those relating to transport and loading between those areas. In assessing the animal and plant health characteristics of an area, taking into account whether it is a pest-free or disease-free area, or is an area of low pest or disease prevalence, and may be retained as such, as the case may be, each Party shall take into account, among other factors:

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

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

(c) any relevant standards, guidelines or recommendations.

2. In addition to paragraph 1, each Party, when establishing whether an area is a pest-free or disease-free area, or is an area of low pest or disease prevalence, shall base its judgement on factors such as geographical conditions, ecosystems, epidemiological surveillance and the effectiveness of animal or plant health controls in that area.

3. An area in the territory of the exporting Party shall be recognized by the importing Party as a pest-free or disease-free area, or an area of low pest or disease prevalence, and may be retained as such, as the case may be, when the exporting Party provides the importing Party with sufficient scientific or other information to demonstrate this to the satisfaction of the importing Party. For this purpose, the exporting Party shall, upon request, provide the importing Party with reasonable access in its territory for inspection, testing and other relevant procedures.

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

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

low pest or disease prevalence; or

(b) determine a different final destination for the disposal of a good produced in a pest-free or disease-free area than for a good produced in an area of low pest or disease prevalence;

taking into account any relevant conditions, including those related to transportation and loading.

5. In adopting, maintaining or applying an animal or plant health measure in relation to the introduction, establishment or spread of a pest or disease, each Party shall accord to a good produced in a pest-free or disease-free area in the territory of the other Party treatment no less favorable than that accorded to a good produced in a pest-free or disease-free area in another country presenting the same level of risk. The Party shall use equivalent risk assessment techniques to evaluate the relevant conditions and controls in the pest-free or disease-free area and in the area adjacent to that area, and shall take into account any relevant conditions, including those related to transportation and cargo.

6. The importing Party shall seek agreement with the exporting Party, upon request, on specific requirements, compliance with which would allow a good produced in an area of low pest or disease prevalence in the territory of the exporting Party to be imported into the territory of the importing Party if it achieves the level of protection required by the importing Party.

Article 4-16. Control, Inspection and Approval Procedures.

1. Each Party shall, in relation to any control or inspection procedure it carries out:

(a) initiate and conclude the procedure as expeditiously as possible and in a manner no less favorable to a good of the other Party than to a like good of the Party or of any other country;

(b) publish the normal duration of the procedure or communicate to any person requesting it the expected duration of the procedure;

(c) ensure that the competent body:

(i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant accurately and fully of any deficiencies;

(ii) as soon as possible, transmits to the applicant the results of the procedure in an accurate and complete manner, so that any necessary corrective action can be taken;

(iii) where the application is deficient, continue, as far as possible, with the procedure if the applicant so requests; and

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

(d) limit the information to be submitted by the applicant to that necessary to carry out the procedure;

(e) grant to confidential or proprietary information arising from the conduct of the proceeding for an asset of the other Party, or submitted in connection with such information:

(i) treatment no less favorable than that accorded to an asset of the Party; and

(ii) treatment that protects the legitimate commercial interests of the applicant in accordance with the law of that Party;

(f) limit any requirement with respect to individual specimens or samples of a good to what is reasonable or necessary;

(g) shall not charge a higher fee for carrying out the procedure on a good of the other Party than on its goods or the goods of another country, taking into account the costs of communication, transportation and other related costs;

(h) use criteria for selecting the location of the facilities where the proceeding is conducted so as not to cause unnecessary inconvenience to an applicant or its representative;

(i) provide a mechanism for reviewing complaints related to the operation of the procedure and for taking corrective action when a complaint is substantiated;

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

(k) in the case of a good that has been modified subsequent to the determination that it complies with the requirements of the applicable animal or plant health measure, limit the procedure to what is necessary to establish that it continues to comply with the requirements of that measure.

2. Each Party shall apply to its approval procedures the relevant provisions of subparagraphs (a) through (i) of paragraph 1, with the necessary modifications.

3. When, at the stage of production of a good, the importing Party requires to carry out a control or inspection procedure, the exporting Party shall, at the request of the importing Party, take such reasonable measures as may be available to it to provide the importing Party with access to its territory in order to carry out its control or inspection procedure. The exporting Party shall also provide the importing Party with the assistance necessary for this purpose.

4. A Party maintaining an approval procedure may establish an authorization requirement for the use of an additive, or set a tolerance level for a contaminant in a food, beverage or feedstuff, in accordance with that procedure, prior to granting access to its domestic market for that food, beverage or feedstuff containing that additive or contaminant. Where that Party so requires, it may adopt a relevant international standard, guideline or recommendation as a basis for granting access to such goods, pending completion of the procedure.

Article 4-17. Notification, Publication and Provision of Information.

1. In addition to the provisions of Articles 17-02 (Publication) and 17-03 (Notification and Provision of Information), when proposing the adoption or modification of an animal or plant health measure of general application, each Party shall:

(a) at least 60 days in advance, publish a notice and notify the other Party in writing of its intention to adopt or modify that measure, other than a law, and publish and provide to the other Party the full text of the proposed measure in a manner that will enable interested persons to become familiar with the proposal;

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

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

(d) without discrimination, allow the other Party and interested persons to make comments in writing and, upon request, discuss them and take into account the results of those discussions.

2. Each Party shall, through appropriate measures, seek to ensure, with respect to an animal or plant health measure that a competent authority other than a central or federal government authority, as the case may be, intends to adopt or modify:

(a) that notice and notification of the type required in subparagraphs (a) and (b) of paragraph 1 is made at an appropriate initial stage prior to its adoption; and

(b) compliance with subparagraphs (c) and (d) of paragraph 1.

3. Where a Party considers it necessary to address an urgent problem related to animal or plant health protection, it may omit any of the steps set out in paragraphs 1 and 2 provided that, once an animal or plant health measure has been adopted:

(a) immediately notifies the other Party, in accordance with the requirements set out in paragraph 1(b), including a brief description of the urgent problem;

(b) provides a copy of the measure to the other Party or interested persons upon request; and

(c) without discrimination, allow the other Party and interested persons to make comments in writing and, upon request, discuss them and take into account the results of those discussions.

4. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 3, allow a reasonable period to elapse between the publication of an animal or plant health measure of general application and the date of entry into force of the measure, in order to allow time for interested persons to adapt to the measure.

5. Each Party shall designate a governmental authority to be responsible for the implementation in its territory of the notification provisions of this Article and shall notify the other Party accordingly. Where a Party designates two or more governmental authorities for this purpose, it shall provide the other Party with complete and unambiguous information on the scope of responsibilities of those authorities.

6. Where the importing Party denies entry into its territory of a good of the other Party because it does not comply with an animal or plant health measure, the importing Party shall, upon request, provide a written explanation to the exporting Party, identifying the relevant measure as well as the reasons why the good does not comply with that measure.

Article 4-18. Information Centers.

1. Each Party shall ensure that there is an information center capable of responding to all reasonable inquiries from the other Party and interested persons, as well as providing relevant documentation regarding:

(a) any animal or plant health measures of general application, including control or inspection or approval procedures, proposed, adopted or maintained in its territory by any government, whether central or federal;

(b) the Party's risk assessment processes and the factors it takes into consideration in conducting the assessment and in establishing its appropriate level of protection;

(c) the Party's membership and participation in international and regional animal and plant health and phytosanitary bodies and systems, and bilateral and multilateral agreements within the scope of this section, and in relation to the provisions of those bodies, systems or agreements; and

(d) the location of notices published pursuant to this section or the place where the information contained therein may be obtained.

2. Each Party shall ensure that, where copies of documents are requested by the other Party or interested persons, in accordance with the provisions of this Section, they shall be provided at the same price as for domestic sale, plus the cost of postage.

Article 4-19. Limitations on the Provision of Information.

Nothing in this Section shall be construed to require a Party to furnish any information the dissemination of which it considers likely to impede the enforcement of its laws, to be contrary to the public interest, or to prejudice the legitimate commercial interests of particular enterprises.

Article 4-20. Working Group on Animal and Plant Health Measures.

1. The Parties establish the Working Group on Animal and Phytosanitary Measures, composed of representatives of each Party with responsibilities in animal and phytosanitary matters.

2. The Working Group shall:

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

(b) may be assisted by experts and expert organizations as it deems appropriate;

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

(d) shall meet, at the request of any Party, at least once a year, unless otherwise agreed by the Parties; and

(e) may establish working groups as it deems appropriate and determine their scope and mandate.

3. The Working Group shall facilitate:

(a) the improvement in food safety and animal and plant health conditions in the territory of the Parties;

(b) the activities of the Parties in accordance with articles 4-12 and 4-15;

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

(d) consultations on specific animal or phytosanitary matters.

Article 4-21. Technical Consultations.

1. Each Party may request consultations with the other Party on any problem related to this Section.

2. Each Party may have recourse to relevant international standardizing organizations, including those referred to in paragraph 5 of Article 4-12, for advice and assistance on animal and plant health matters within their respective mandates.

3. Where a Party requests consultations concerning the application of this Section with respect to an animal or plant health measure of the other Party and so notifies the Working Group, the Working Group may facilitate consultations, if it does not consider the matter itself, by referring the matter to an ad-hoc working group or other forum for non-binding technical advice or recommendation.

4. The Working Group shall consider any matter referred to it pursuant to paragraph 3 as expeditiously as possible, particularly in relation to perishable goods, and shall forward to the Parties, in turn, any technical advice or recommendations it develops or receives in relation to that matter. The Parties shall send to the Working Group a written response regarding such technical advice or recommendation, within such time as the Working Group may direct.

5. Where, in accordance with paragraph 3, the Parties have had recourse to consultations facilitated by the Working Group, the consultations shall, if so agreed by the Parties, constitute consultations under Article 19- 04 (Consultations).

6. A Party asserting that an animal or plant health measure of the other Party is inconsistent with this Section shall have the burden of proving inconsistency.

Article 4-21. Technical Cooperation.

1. Each Party shall, upon request of the other Party:

(a) facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to strengthen its animal and plant health measures and related activities, including research, process technology, infrastructure and the establishment of domestic regulatory bodies. Such assistance may include credits, grants and funds for the acquisition of technical skills, training and equipment to facilitate adjustment and compliance with an animal or plant health measure of the other Party;

(b) provide information on its technical cooperation programs relating to animal or plant health measures in areas of particular interest; and

(c) consult with the other Party during the development of any animal or plant health measure, or prior to a change in its application.

Chapter V. Rules of Origin

Article 5-01. Definitions.

For the purposes of this chapter, the following definitions shall apply:

good: any merchandise, product, article or matter;

fungible goods: goods that are interchangeable for commercial purposes, whose properties are essentially identical and that it is not practical to differentiate them by simple visual examination;

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

originating good or originating material: a good or material that qualifies as originating in accordance with the provisions of this chapter;

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

(a) minerals extracted in the territory of one or both Parties;

(b) plants harvested in the territory of one or both of the Parties;

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

(d) goods obtained from hunting or fishing in the territory of one or both Parties;

(e) fish, crustaceans and other marine species obtained by vessels registered or recorded by a Party and flying the flag of that Party;

(f) goods produced on board factory ships from the goods identified in subparagraph e), provided that such factory ships are registered or recorded by a Party and are flying the flag of that Party;

(g) goods obtained by a Party or a person of a Party from the seabed or subsoil outside the territorial waters, provided that

the Party has rights to exploit that seabed or subsoil;

(h) wastes and residues derived from:

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

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

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

containers and packing materials for shipment: goods that are used to protect a good during transportation, other than containers and materials for retail sale;

shipping and repacking costs: costs incurred in repacking and transporting a good outside the territory where the producer or exporter of the good is located;

cost of sales promotion, marketing and after-sales services: the following costs related to sales promotion, marketing and after-sales services:

(a) sales promotion and marketing; media advertising; advertising and market research; promotional and demonstration materials; exhibited goods; sales promotion conferences, trade shows and conventions; banners; marketing exhibitions; free samples; sales, marketing and after-sales service publications such as goods brochures, catalogs, technical publications, price lists, service manuals and sales support information; establishment and protection of logos and trademarks; sponsorships; restocking charges for wholesale and retail sales; representation expenses;

(b) sales and marketing incentives; wholesale, retail and consumer rebates and rebates on goods;

(c) for sales promotion, marketing and after-sales service personnel: salaries and wages, sales commissions, bonuses; medical, insurance and pension benefits; travel, lodging and living expenses, and membership and professional fees;

(d) hiring and training of sales promotion, marketing and after-sales service personnel, and training of the client's employees after the sale;

(e) insurance for civil liability derived from the property;

(f) office equipment for sales promotion, marketing and after-sales services;

(g) telephone, mail and other means of communication, for sales promotion, marketing and after-sales services;

(h) rents and depreciation of offices for sales promotion, marketing and after-sales services, as well as distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and costs of repair and maintenance of offices and distribution centers; and

(j) payments by the producer to others for warranty repairs;

net cost: total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and repackaging, as well as ineligible interest costs, as set forth in the annex to this article;

ineligible interest costs: interest paid by a producer on its financial obligations that exceeds 10 percentage points above the highest rate of interest on debt obligations issued by the central or federal government, as the case may be, the Party in which the producer is located, as set forth in the Annex to this Article;

total cost: the sum of the following elements in accordance with the provisions of the annex to this article:

(a) the cost or value of direct manufacturing materials used in the production of the good;

(b) the cost of the direct labor used in the production of the good; and

(c) an amount for direct and indirect costs and expenses of manufacturing the good, reasonably allocated to the good, except for the following items:

(i) the costs and expenses of a service provided by the producer of a good to another person, when the service does not relate to the good;

(ii) costs and losses resulting from the sale of a part of the producer's business, which constitutes a discontinued operation;

(iii) costs related to the cumulative effect of changes in the application of accounting principles;

(iv) costs or losses resulting from the sale of a capital asset of the producer;

(v) costs and expenses related to acts of God or force majeure; or

(vi) profits earned by the producer of the good, whether retained by the producer or paid to others as dividends, and taxes paid on those profits, including capital gains taxes;

direct manufacturing costs and expenses: those incurred in a period, directly related to the good, other than the cost or value of direct materials and direct labor costs;

indirect manufacturing costs and expenses: those incurred in a period, other than direct manufacturing costs and expenses, direct labor costs and cost or value of direct materials;

F.O.B.: free on board (F.O.B.);

place where the producer is located: in relation to a good, the production plant of that good;

material: a good used in the production of another good;

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

fungible materials: materials that are interchangeable for commercial purposes and whose properties are essentially identical;

indirect material: a good used in the production, testing or inspection of a good, but not physically incorporated in the good; or a good that is used in the maintenance of buildings or operation of equipment related to the production of a good, including:

(a) fuel and power;

(b) tools, dies and molds;

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

(d) lubricants, greases, composites and other materials used in the production or operation of equipment or buildings;

(e) gloves, goggles, footwear, clothing, safety equipment and attachments;

(f) equipment, apparatus and attachments used for the verification or inspection of the goods;

(g) catalysts and solvents; or

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

intermediate material: self-manufactured materials used in the production of a good, and designated in accordance with Article 5-07;

related person: a person who is related to another person, as follows:

(a) one of them holds positions of responsibility or management in an enterprise of the other;

(b) they are legally recognized as associated in business;

(c) they are in the relationship of employer and employee;

(d) a person has, directly or indirectly, ownership, control or possession of 25% or more of the outstanding and voting shares or securities of both;

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

(f) both persons are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) are members of the same family (children, siblings, grandparents or spouses);

generally accepted accounting principles: the consensus recognized to the substantial support authorized in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application, as well as detailed practical rules and procedures;

production: the growing, extracting, harvesting, fishing, hunting, manufacturing, processing or assembling of a good;

producer: a person who grows, extracts, harvests, fishes, hunts, manufactures, processes or assembles a good;

royalties: payments that relate to intellectual property rights; used: employed or consumed in the production of goods;

transaction value of a good: the price actually paid or payable for a good related to the transaction of the producer of the good in accordance with the principles of Article 1 of the Customs Valuation Code, adjusted in accordance with the principles of Article 8.1, 8.3 and 8.4 thereof, without regard to whether the good is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Code shall be the producer of the good;

transaction value of a material: the price actually paid or payable for a transaction-related material by the producer of the good in accordance with the principles of Article 1 of the Customs Valuation Code, adjusted in accordance with the principles of Article 8.1, 8.3 and 8.4 thereof, without regard to whether the material is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Code shall be the supplier of the material, and the buyer referred to in the Customs Valuation Code shall be the producer of the good.

Article 5-02. Instruments of Application.

For the purposes of this chapter:

(a) the basis for tariff classification is the Harmonized System;

(b) the determination of the transaction value of a good or material shall be made in accordance with the principles of the Customs Valuation Code; and

(c) all costs referred to in this Chapter shall be recorded and maintained in accordance with generally accepted accounting principles applicable in the territory of the Party where the good is produced.

Article 5-03. Originating Goods.

A good shall be originating in the territory of a Party when:

(a) it is wholly obtained or produced entirely in the territory of one or both Parties, as defined in Article 5-01;

(b) it is produced in the territory of one or both of the Parties exclusively from materials that qualify as originating under this Chapter;

(c) is produced in the territory of one or both of the Parties from non-originating materials that meet a change in tariff classification and other requirements, as specified in the Annex to this Article, and the good complies with the other applicable provisions of this Chapter;

(d) is produced in the territory of one or both of the Parties from non-originating materials that comply with a change in tariff classification and other requirements, and the good complies with a regional value content requirement, as specified in the Annex to this Article, and with the other applicable provisions of this Chapter;

(e) is produced in the territory of one or both of the Parties and complies with a regional value content requirement, as specified in the Annex to this Article, and complies with the other applicable provisions of this Chapter; or

(f) except for goods covered by Chapters 61 through 63 of the Harmonized System, the good is produced in the territory of one or both of the Parties, but one or more of the non-originating materials used in the production of the good does not comply with a change in tariff classification because:

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

(ii) the heading for the good is the same for both the good and its parts and that heading is not divided into subheadings or

the subheading is the same for both the good and its parts;

provided that the regional value content of the good, determined in accordance with Article 5-04, is not less than 50%, except as otherwise provided in Articles 5-15 or 5-20, when the transaction value method is used or 41.66% when the net cost method is used, and the good complies with the other applicable provisions of this Chapter.

2. For purposes of this Chapter, the production of a good from non-originating materials that meet a change in tariff classification and other requirements, as specified in the Annex to this Article, shall be made entirely in the territory of one or both Parties, and any regional value content requirement of a good shall be satisfied entirely in the territory of one or both Parties.

Article 5-04. Regional Value Content.

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the option of the exporter or producer of the good, in accordance with the transaction value method provided in paragraph 2, or the net cost method provided in paragraph 4.

2. In order to calculate the regional value content of a good based on the transaction value method, the following formula shall be applied:

RCV = VT - VMN / VT x 100

where

RCV: regional content value expressed as a percentage.

VT: transaction value of a good adjusted on an F.O.B. basis, except as provided in paragraph 3.

VMN: value of non-originating materials used by the producer in the production of the good determined in accordance with the provisions of Article 5-05.

3. For purposes of paragraph 2, where the good is not exported directly by the producer of the good, the transaction value shall be adjusted to the point at which the good is received by the purchaser within the territory where the producer is located.

4. To calculate the regional value content of a good based on the net cost method, the following formula shall be applied:

RCV = NC-VMN / CN x 100

where

RCV: regional content value expressed as a percentage.

NC: net cost of the good.

VMN: value of non-originating materials used by the producer in the production of the good determined in accordance with the provisions of Article 5-05.

5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 4 where:

(a) there is no transaction value because the good is not the subject of a sale;

(b) the transaction value of the property cannot be determined because there are restrictions on the transfer or use of the property by the buyer other than those that:

(i) imposed or required by the law or authorities of the Party in which the buyer of the good is located; (ii) limit the geographical territory where the good may be resold; or (iii) do not appreciably affect the value of the good;

(c) the sale or price is dependent on some condition or consideration, the value of which cannot be determined in relation to the good;

(d) directly or indirectly reverts to the seller any part of the proceeds of the resale or of any subsequent transfer or use of the property by the buyer, unless due adjustment can be made in accordance with the provisions of Article 8 of the Customs Valuation Code;

(e) the buyer and seller are related persons and the relationship between them influences the price, except as provided in Article 1.2 of the Customs Valuation Code;

f) the good is sold by the producer to a related person and the volume of sales, in units of quantity of identical or similar goods, sold to related persons, during a period of six months immediately preceding the month in which the producer has sold that good, exceeds 85% of the producer's total sales of those goods during that period;

g) the exporter or producer elects to accumulate the regional value content of the good in accordance with Article 5-08;

h) the good:

(i) is a motor vehicle of heading 8701 or 8702, subheading 8703.21 through 8703.90, or heading 8704, 8705, or 8706; or

(ii) is identified in annex 1 to item 5-15 or annex 2 to item 5-15 and is for use in a motor vehicle of heading 8701 or 8702, subheading 8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(i) the good is designated as an intermediate material in accordance with Article 5-07 and is subject to a regional value content requirement.

Article 5-05. Value of Materials.

1. The value of a material:

(a) shall be the transaction value of the material; or

(b) where there is no transaction value or where the transaction value of the material cannot be determined in accordance with the principles of Article 1 of the Customs Valuation Code, shall be calculated in accordance with the principles of Articles 2 through 7 of that Code.

2. When not considered under subparagraphs a) or b) of paragraph 1, the value of a material shall include:

(a) freight, insurance, packing costs, and all other costs incurred in transporting the material to the port of importation in the Party where the producer of the good is located, except as provided in paragraph 3; and

(b) the cost of waste and scrap resulting from the use of the material in the production of the good, less any recovery of these costs, provided that the recovery does not exceed 30 per cent of the value of the material, determined in accordance with paragraph 1.

3. Where the producer of the good acquires the non-originating material within the territory of the Party where it is located, the value of the material shall not include freight, insurance, packing costs and all other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

4. For purposes of calculating regional value content pursuant to Article 5-04, except as provided in paragraph 2 of Article 5-15, for a motor vehicle identified in paragraph 3 of Article 5-15, or a component identified in Annex 2 to Article 5-15, the value of non-originating materials used by the producer in the production of a good shall not include the value of non-originating materials used by:

(a) another producer in the production of an originating material that is acquired and used by the producer of the good in the production of that good; or

(b) the producer of the good in the production of a self-produced originating material that is designated by the producer as an intermediate material in accordance with Article 5-07.

Article 5-06. De Minimis.

1. A good shall be considered originating if the value of all non-originating materials used in the production of the good that do not comply with the corresponding change in tariff classification set out in the Annex to Article 5-03 does not exceed 7% of the transaction value of the good adjusted on the basis indicated in paragraph 2 or 3, as the case may be, of Article 5-04 or, in the cases referred to in subparagraphs a) to e) of paragraph 5 of Article 5-04 if the value of all the non-originating materials referred to above does not exceed 7% of the total cost of the good.

2. When the same good is subject to a regional value content requirement, the value of those non- originating materials shall be taken into account in the calculation of the regional value content of the good and the good shall satisfy the other applicable requirements of this chapter.

3. A good that is subject to a regional value content requirement set out in the Annex to Article 5-03 need not satisfy that requirement if the value of all non-originating materials does not exceed 7% of the transaction value of the good adjusted on the basis indicated in paragraph 2 or 3, as the case may be, of Article 5-04 or in the cases referred to in subparagraphs (a) through (e) of paragraph 5 of Article 5-04, if the value of all the non-originating materials referred to above does not exceed 7% of the total cost of the good.

4. Paragraph 1 does not apply to:

(a) goods covered by Chapters 50 through 63 of the Harmonized System; nor.

(b) a non-originating material that is used in the production of goods falling within Chapters 01 through 27 of the Harmonized System, unless the non-originating material falls within a subheading other than that of the good for which origin is being determined in accordance with this Article.

5. A good covered by Chapters 50 through 63 of the Harmonized System that is non-originating because the fibers and yarns used in the production of the material that determines the tariff classification of that good do not comply with the change in tariff classification provided in the Annex to Article 5-03, shall nevertheless be considered as originating if the total weight of those fibers and yarns of that material does not exceed 7 percent of the total weight of that material.

Article 5-07. Intermediate Materials.

1. For the purposes of calculating the regional value content in accordance with Article 5-04, the producer of a good may designate as intermediate materials, except for the components listed in Annex 2 to Article 5-15 and goods of heading 87.06 for use in motor vehicles covered in paragraph 3 of Article 5-15, any self- produced material used in the production of the good provided that such material complies with the provisions of Article 5-03.

2. Where the intermediate material is subject to a regional value content requirement in accordance with the Annex to Article 5-03, the regional value content shall be calculated on the basis of the net cost method set out in Article 5-04.

3. For purposes of calculating the regional value content of the good, the value of the intermediate material shall be the total cost that can reasonably be assigned to that intermediate material in accordance with the Annex to Article 5-01.

4. Ifa material designated as an intermediate material is subject to a regional value content requirement, no other self-produced material subject to a regional value content requirement used in the production of that intermediate material may, in turn, be designated by the producer as an intermediate material.

5. When a good referred to in paragraph 2 of Article 5-15 is designated as an intermediate material, that designation shall be technically applied to the calculation of the net cost of that good, and the value of the non-originating materials shall be determined in accordance with the provisions of paragraph 2 of Article 5- 15.

Article 5-08. Cumulation.

For purposes of establishing whether a good is originating, an exporter or producer may cumulate its production with that of one or more producers in the territory of one or both Parties, of materials that are incorporated in the good, so that the production of the materials shall be considered as having been carried out by that exporter or producer, provided that the provisions of Article 5-03 are complied with.

Article 5-09. Expendable Goods and Materials.

1. For the purpose of establishing whether a good is originating, when originating and non-originating fungible materials that are physically mixed or combined in inventory are used in its production, the origin of the materials may be determined by one of the inventory management methods established in paragraph 3.

2. When originating and non-originating fungible goods are physically mixed or combined in inventory, and prior to their exportation they do not undergo any production process or any other operation in the territory of the Party in which they were physically mixed or combined, other than unloading, reloading or any other movement necessary to maintain the goods in good condition or to transport them to the territory of the other Party, the origin of the good may be determined from one of the inventory management methods set out in paragraph 3.

3. The applicable inventory management methods for expendable materials or goods shall be as follows:

(a) "FIFO" (first-in-first-out) is the inventory management method whereby the origin of the number of units of the materials

or consumables first received into inventory is considered to be the origin in equal number of units of the materials or consumables first removed from inventory;

(b) "LILO" (last-in-first-out) is the inventory management method by which the origin of the number of units of the materials or consumables last received into inventory is considered as the origin in equal number of units of the materials or consumables first removed from inventory; or

(c) "averaging" is the method of inventory management whereby, except as provided in paragraph 4, the determination as to whether materials or consumables are originating shall be made through the application of the following formula:

PMO = TMO / TMOYN x 100

where

PMO: average of originating materials or consumables.

TMO: total units of originating materials or consumables that are part of the pre-departure inventory.

TMOYN: total sum of units of originating and non-originating materials or consumables forming part of the pre-departure inventory.

4. In the case where the good is subject to a regional value content requirement, the determination of the non-originating fungible materials shall be made through the application of the following formula:

PMN = TMN / TMOYN x 100

where

PMN: average of non-originating materials.

TMN: total value of non-originating fungible materials forming part of the inventory prior to departure.

TMOYN: total value of originating and non-originating consumables in the pre-departure inventory.

5. Once one of the inventory management methods set forth in paragraph 3 has been selected, it shall be used throughout the fiscal year or period.

Article 5-10. Sets.

1. Sets or assortments of goods that are classified according to the provisions of General Rule 3 of the Harmonized System, as well as goods whose description according to the nomenclature of the Harmonized System is specifically that of a set or assortment, shall qualify as originating, provided that each of the goods contained in the set or assortment complies with the rule of origin that has been established for each of the goods in this chapter.

2. Notwithstanding the provisions of paragraph 1, a set of goods shall be considered as originating if the value of all the non-originating goods used in the formation of the set does not exceed 7% of the transaction value of the set adjusted on the basis indicated in paragraph 2 or 3, as the case may be, of Article 5-04 or, in the cases referred to in subparagraphs a) to e) of paragraph 5 of Article 5-04, if the value of all the non- originating goods referred to above does not exceed 7% of the total cost of the set.

3. The provisions of this article shall prevail over the specific rules set forth in the annex to article 5-03.

Article 5-11. Indirect Materials.

Indirect materials shall be considered as originating without regard to the place of their production, and the value of such materials shall be the cost thereof as reported in the accounting records of the producer of the good.

Article 5-12. Accessories, Spare Parts and Tools.

1. Accessories, spare or replacement parts and tools delivered with the good as part of the usual accessories, spare or replacement parts and tools of the good shall be disregarded in determining whether all non-originating materials used in the production of the good comply with the applicable change in tariff classification set out in the Annex to Article 5-03, provided that:

(a) the accessories, spare or replacement parts and tools are not invoiced separately from the good, regardless of whether they are separately itemized or detailed on the invoice itself; and

(b) the quantity and value of such accessories, spare or replacement parts and tools are those customary for the good.

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

Article 5-13. Containers and Packaging Materials for Retail Sale.

1. Containers and packaging materials in which a good is presented for retail sale, when classified with the good they contain, shall not be taken into account in deciding whether all non-originating materials used in the production of the good comply with the corresponding change in tariff classification set out in the Annex to Article 5-03.

2. Where the good is subject to the regional value content requirement, the value of retail containers and packaging materials shall be considered as originating or non-originating, as the case may be, in calculating the regional value content of the good.

Article 5-14. Containers and Packing Materials for Shipment.

1. Containers and packing materials for transporting the good shall not be taken into account for purposes of establishing whether all non-originating materials used in the production of the good comply with the corresponding change in tariff classification set out in the Annex to Article 5-03.

2. Where the good is subject to the regional value content requirement, the value of the packaging materials for transporting the good shall be considered as originating or non-originating, as the case may be, in calculating the regional value content of the good, and the value of such material shall be the cost thereof reported in the accounting records of the producer of the good.

Article 5-15. Automotive Goods.

1. For the purposes of this article, the following definitions shall apply:

chassis: the bottom plate of a motor vehicle;

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

(a) motor vehicles falling under subheading 8701.20, Mexican tariff item 8702.10.03 or 8702.90.04 or Bolivian subheading 8702.10 or 8702.90 when they are motor vehicles designed for the transport of 16 persons or more, subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;

(b) motor vehicles of subheading 8701.10 or 8701.30 to 8701.90;

(c) motor vehicles covered by Mexican tariff item 8702.10.01, 8702.10.02, 8702.90.01, 8702.90.02 or 8702.90.03, or Bolivian subheading 8702.10 or 8702.90 when they are motor vehicles designed for the transport of fifteen persons or less, or Bolivian subheading 8704.21 or 8704.31; or

(d) motor vehicles falling under subheading 8703.21 to 8703.90;

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

original equipment: material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not an assembler of the motor vehicle. Such material is:

(a) a good covered by Annex 1 to this Article; or.

b) an assembly of automotive components, an automotive component or a material listed in Annex 2 to this Article;

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

model name: the word or group of words, letter or letters, number or numbers or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler to:

(a) differentiate the motor vehicle from other motor vehicles using the same platform design;

(b) to associate the motor vehicle with other motor vehicles using a different platform design; or Cc) to indicate a platform design;

platform: the primary assembly of a load-carrying structural assembly of a motor vehicle that determines the basic size of that vehicle and forms the structural base that supports the powertrain, and serves to join the motor vehicle in various types of frames, such as body mount, dimensional frame, and unit body;

motor vehicle: that of heading 87.01, 87.02, 87.03, 87.04, 87.05 or 87.06.

2. For purposes of calculating the regional value content in accordance with the net cost method set forth in paragraph 4 of article 5-04 for:

(a) goods that are motor vehicles covered by Mexican tariff item 8702.10.01, 8702.10.02, 8702.90.01, 8702.90.02 or 8702.90.03, or by Bolivian subheading 8702.10 or 8702.90 when they are motor vehicles designed for the transportation of fifteen persons or less, or by subheading 8703.21 through 8703.90, 8704.21 or 8704.31; or

(b) goods covered by Annex 1 to this article when they are subject to a regional value content requirement and are intended to be used as original equipment in the production of goods that are motor vehicles covered by Mexican tariff item 8702.10.01, 8702.10.02, 8702.90.01, 8702.90.02 or 8702.90.03, or in Bolivian subheading 8702.10 or 8702.90 when they are motor vehicles designed for the transport of fifteen persons or less, or in subheading 8703.21 through 8703.90, 8704.21 or 8704.31;

the value of the non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials, determined in accordance with paragraphs 1 and 2 of Article 5-05, imported from countries that are not Parties, covered in Annex 1 to this Article and which are used in the production of the good or in the production of any material used in the production of the good.

3. For purposes of calculating the regional value content in accordance with the net cost method set out in paragraph 4 of Article 5-04 for goods that are motor vehicles under heading 87.01, under Mexican tariff item 8702.10.03 or 8702.90.04, or under Bolivian subheading 8702.10 or 8702.90 when they are motor vehicles designed for the transport of 16 persons or more, under subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06, or for a component identified in annex 2 to this article to be used as original equipment in the production of the motor vehicles described in this paragraph, the value of the non- originating materials used by the producer in the production of the good shall be the sum of:

(a) for each material used by the producer and listed in annex 2 to this article, whether or not produced by the producer, at the producer's option, and determined in accordance with article 5-05 or paragraph 3 of article 5-07, either of the following two values:

(i) the value of the non-originating material; or

(ii) the value of the non-originating materials used in the production of that material; and (b) the value of any other non-originating materials used in the production of that material.

(b) the value of any other non-originating material used by the producer, which is not included in Annex 2 to this Article, determined in accordance with Article 5-05 or paragraph 3 of Article 5-07.

4. For purposes of calculating the regional value content of a motor vehicle identified in paragraph 2 or 3, the producer may average the calculation over its fiscal year or period using any of the following categories, either by taking as a basis all motor vehicles in that category, or only motor vehicles in that category that are exported to the territory of the other Party:

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

(b) the same class of motor vehicles produced in the same plant in the territory of a Party; or c) the same model line in motor vehicles produced in the territory of a Party.

5. For purposes of calculating the regional value content of one or all of the goods covered by a tariff classification listed in Annex 1 to this Article, or of a component or material listed in Annex 2 to this Article, that are produced in the same plant, the producer of the good may:

(a) average its calculation:

(i) in the fiscal year or period of the producer of the motor vehicle to whom the good is sold;

(ii) in any quarterly or monthly period; or

(iii) in its own fiscal year or period, if the good is sold as a spare or replacement part;

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

(c) in respect of any calculation made under this paragraph, calculate separately the regional value content of the goods that are exported to the territory of the other Party.

6. Notwithstanding the Annex to Article 5-03, the regional value content shall be:

(a) for goods that are motor vehicles under heading 87.01, under Mexican tariff item 8702.10.03 or 8702.90.04, or under Bolivian subheading 8702.10 or 8702.90 when they are motor vehicles designed for the transport of 16 persons or more, under subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06, 35% according to the net cost method for the fiscal year or period of a producer beginning on the date nearest January 1, 1995 through the fiscal year or period ending on the date nearest January 1, 1997; and

(b) for the goods set out in Annex 1 to this article, subject to the regional value content requirement and intended for use in the motor vehicles covered by paragraphs 2 and 3, except for goods of heading 84.07, 84.08 or subheading 8708.40, when they are intended for use in the motor vehicles included in paragraphs 2 and 3, in which case the regional content as defined in footnotes 4 and 32 of section B of the annex to article 5-03 shall apply, and except for heading 87.06, in which case the provisions of subparagraph (a) shall apply:

(i) 40% under the net cost method, for a producer's fiscal year or period beginning on the earliest date on January 1, 1995 through the fiscal year or period ending on the earliest date on January 1, 2000; and

(ii) 50% under the net cost method, for the fiscal year or period of a producer beginning on the earliest date on January 1, 2000 through the fiscal year or period of a producer ending on the earliest date on January 1, 2005.

Article 5-16. Non-origin Conferring Transactions and Practices.

1. A good shall not be considered as originating solely because of:

(a) dilution in water or other substance that does not materially alter the characteristics of the good;

(b) simple operations intended to ensure the preservation of the goods during transport or storage, such as aeration, refrigeration, removal of damaged parts, drying or addition of substances;

(c) dedusting, sifting, sorting, classifying, selecting, washing, cutting;

(d) packing, repacking or packaging for retail sale;

(e) assembling of goods to form sets or assortments;

(f) the application of marks, labels or similar distinctive signs;

(g) cleaning, including the removal of rust, grease, paint or other coatings; and

(h) the simple assembly of parts and components that are classified as a good under general rule 2 (a) of the Harmonized System. The foregoing shall not apply to goods that had already been assembled, and subsequently disassembled for convenience of packaging, handling or transportation.

2. Any pricing activity or practice, in respect of which it can be demonstrated, on the basis of sufficient evidence, that its purpose is to evade compliance with the provisions of this chapter, shall not confer origin to a good.

3. The provisions of this article shall prevail over the specific rules set forth in the annex to article 5-03.

Article 5-17. Transshipment and Direct Shipment.

1. A good shall not be considered as originating even if it has been produced in accordance with the requirements of Article 5-03, if subsequent to that production, the good undergoes further processing or is subject to any other operation outside the territories of the Parties, except unloading, reloading or any other movement necessary to maintain it in good condition or to transport it to the territory of the other Party.

2. A good shall not lose its originating status when, while in transit through the territory of one or more non- Parties, with or without transshipment or temporary storage, under the supervision of the competent customs authority in those countries:

(a) the transit is justified by geographical reasons or by considerations relating to transportation requirements;

(b) it is not intended for trade, use or employment in the country or countries of transit; and

c) during its transport and storage it is not subjected to operations other than packing, packaging, loading, unloading, or handling to ensure its preservation.

Article 5-18. Consultations and Modifications.

1. The Parties establish the Working Group on Rules of Origin, composed of representatives of each Party, which shall meet at least twice a year and at the request of any Party.

2. The Working Group shall be responsible for:

(a) ensure the effective implementation and administration of this Chapter;

(b) to reach agreement on the interpretation, application and administration of this Chapter;

(c) to review annually, with respect to ineligible interest costs, the percentage points above the highest rate of interest on debt obligations issued by the federal or central government, as the case may be; and

(d) to attend to any other matters agreed by the Parties.

3. The Parties shall consult regularly and cooperate to ensure that this Chapter is implemented effectively, uniformly and in accordance with the spirit and objectives of this Agreement.

4. Any Party that considers that this Chapter requires modification due to changes in the development of production processes or other matters, may submit to the Working Group a proposal for modification for its consideration and the reasons and studies that support it. The Working Group shall submit a report to the Commission to make the pertinent recommendations to the Parties.

Article 5-19. Interpretation.

For purposes of this Chapter, in applying the Customs Valuation Code to determine the origin of a good:

(a) the principles of that Code shall apply to domestic transactions, with such modifications as the circumstances require, as they would apply to international transactions; and

(b) the provisions of this chapter shall prevail over those of that code insofar as they are inconsistent.

Article 5-20. Transitional Provisions on Regional Content.

A good listed in the Annex to this Article subject to the regional content requirement shall comply with a percentage of regional content of not less than:

(a) 40% under the transaction value method or 33.33% under the net cost method, from January 1, 1995 to December 31, 1997; and

(b) 45% under the transaction value method or 37.50% under the net cost method, from January 1, 1998 to December 31, 1998.

2. A good classified under subheading 6404.11 of the Harmonized System subject to the regional content requirement shall comply with a percentage of regional content of not less than 45% under the transaction value method or 37.50% under the net cost method, from January 1, 1995 through December 31, 1998.

3. As of January 1, 1999, the goods referred to in this article shall comply with the regional content percentage established in the annex to article 5-03.

Chapter VI. Customs Procedures

Article 6-01. Definitions.

1. For purposes of this Chapter, the following definitions shall apply:

competent authority: the authority that, according to the legislation of each Party, is responsible for the administration of its customs and tax laws and regulations;

identical goods: goods that are alike in every respect, including their physical characteristics, quality and commercial prestige. Minor differences in appearance do not prevent them from being considered identical;

determination of origin ruling: a ruling issued as a result of a verification that establishes whether a good qualifies as originating;

preferential tariff treatment: the application of the appropriate tariff rate to an originating good under the Tariff Relief Program;

2. Except as defined in this Article, the definitions set forth in Chapter V (Rules of Origin) are incorporated into this Chapter.

Article 6-02. Declaration and Certification of Origin.

1. For purposes of this Chapter, prior to the entry into force of this Agreement, the Parties shall develop a single format for the certificate and declaration of origin.

2. The certificate of origin referred to in paragraph 1 shall serve to certify that a good exported from the territory of one Party to the territory of the other Party qualifies as originating.

3. Each Party shall provide that its exporters shall complete and sign a certificate of origin in respect of the export of a good for which an importer may claim preferential tariff treatment. For a period of 4 years from the entry into force of this Agreement, the certificate of origin shall require validation by the competent authority of the exporting Party.

4. Each Party shall provide that:

(a) where an exporter is not the producer of the good, it completes and signs the certificate of origin on the basis of the declaration of origin referred to in paragraph 1; and

(b) the declaration of origin covering the good being exported is completed and signed by the producer of the good and provided voluntarily to the exporter.

5. Each Party shall provide that the certificate of origin completed and signed by the exporter shall cover:

(a) a single importation of one or more goods; or.

(b) several imports of identical goods to be made within a period of time established by the exporter on the certificate of origin, which shall not exceed the period of time set out in paragraph 6.

6. Each Party shall provide that the certificate of origin shall be accepted by the competent authority of the importing Party for one year from the date of signature.

Article 6-03. Obligations with Respect to Imports.

1. Each Party shall require an importer claiming preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) declares in writing, on the import document provided for in its legislation, on the basis of a valid certificate of origin, that the good qualifies as originating;

(b) has the certificate of origin in its possession at the time of making such declaration;

(c) provides a copy of the certificate of origin when requested by its competent authority; and

(d) submits a corrected declaration and pays the corresponding duties, when he has reason to believe that the certificate of origin on which his import declaration is based contains incorrect information. When the importer submits the aforementioned declaration spontaneously, he shall not be penalized.

2. Each Party shall provide that, where its importer fails to comply with any of the requirements set out in paragraph 1, preferential tariff treatment shall be denied to the good imported from the territory of the other Party for which the

preference was claimed.

Article 6-04. Export Obligations.

1. Each Party shall provide that its exporter or producer that has completed and signed a certificate or declaration of origin shall furnish a copy of the certificate or declaration of origin to its competent authority upon request.

2. Each Party shall provide that its exporter or producer who has completed and signed a certificate or declaration of origin and has reason to believe that such certificate or declaration contains incorrect information shall promptly notify in writing any change that may affect the accuracy or validity of the certificate or declaration of origin to all persons to whom he has delivered the certificate or declaration and, in accordance with its legislation, to its competent authority, in which case he shall not be penalized for having submitted an incorrect certification or declaration.

3. Each Party shall provide that a false certification or declaration of origin made by its exporter or producer to the effect that a good to be exported to the territory of the other Party qualifies as originating shall have the same legal consequences, with such modifications as the circumstances may require, as those that would apply to its importer making false declarations or statements in contravention of its customs laws and regulations.

4. The competent authority of the exporting Party shall bring to the attention of the competent authority of the importing Party the notification of the exporter or producer referred to in paragraph 2.

Article 6-05. Exceptions.

Provided that it is not part of two or more imports that are made or planned for the purpose of evading compliance with the certification requirements of Articles 6-02 and 6-03, the certificate of origin shall not be required for the importation of goods in the following cases:

(a) the importation for commercial purposes of goods whose customs value does not exceed one thousand United States dollars or its equivalent in national currency, but the invoice may be required to contain a declaration by the importer or exporter that the good qualifies as originating;

(b) the importation for non-commercial purposes of goods the customs value of which does not exceed one thousand United States dollars or its equivalent in local currency; and

c) the importation of a good for which the importing Party has waived the requirement of presentation of the certificate of origin.

Article 6-06. Accounting Records.

Each Party shall provide that:

(a) its exporter or producer that completes and signs a certificate or declaration of origin retains for at least five years after the date of signature of that certificate or declaration, all records and documents relating to the origin of the good, including those relating to:

(i) the acquisition, costs, value and payment for the good that is exported from its territory;

(ii) the acquisition, costs, value and payment for all materials, used in the production of the good being exported from its territory; and

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

(b) for the purposes of the verification procedure established in Article 6-07, the exporter or producer provides to the competent authority of the importing Party the records and documents referred to in subparagraph (a). When the records and documents are not in the possession of the exporter or producer, the exporter or producer may request the records and documents from the producer or supplier of the materials to be provided through him to the competent authority conducting the verification;

c) an importer claiming preferential tariff treatment for a good being imported into its territory from the territory of the other Party shall retain for at least five years from the date of importation, the certificate of origin and all other documentation relating to the importation required by the importing Party.

Article 6-07. Procedures to Verify Origin.

1. The importing Party may request from the exporting Party information regarding the origin of a good through its competent authority.

2. To determine whether a good imported into its territory from the territory of the other Party qualifies as originating, each Party may, through its competent authority, verify the origin of the good by means of:

(a) written questionnaires addressed to exporters or producers in the territory of the other Party; or

(b) verification visits to an exporter or producer in the territory of the other Party, for the purpose of examining the records and documents evidencing compliance with the rules of origin in accordance with Article 6-06, and inspecting the facilities used in the production of the good and, where appropriate, those used in the production of the materials.

3. The provisions of paragraph 2 shall be without prejudice to the powers of review of the importing Party over its own importers, exporters or producers.

4. An exporter or producer receiving a questionnaire pursuant to paragraph 2(a) shall respond and return the questionnaire no later than 30 days from the date of its receipt. During this period the exporter or producer may request in writing to the importing Party an extension, which in its case shall not exceed 30 days. This request shall not result in the denial of preferential tariff treatment.

5. In the event that the exporter or producer fails to respond or return the questionnaire within the relevant time period, the importing Party may deny preferential tariff treatment upon resolution under the terms of paragraph 11.

6. Before carrying out a verification visit pursuant to paragraph 2(b), the importing Party shall be required, through its competent authority, to notify in writing its intention to carry out the visit. The notification shall be sent to the exporter or producer to be visited, to the competent authority of the Party in whose territory the visit is to take place and, if so requested by the latter, to the embassy of that Party in the territory of the importing Party. The competent authority of the importing Party shall request the written consent of the exporter or producer to be visited.

7. The notification referred to in paragraph 6 shall contain:

(a) the identification of the competent authority making the notification;

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

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

(d) the purpose and scope of the proposed verification visit, making specific mention of the good or goods subject to verification to which the certificate or certificates of origin refer;

(e) the names, personal data and positions of the officials who will carry out the verification visit; and f) the legal basis for the verification visit.

8. Any modification to the information referred to in paragraph 7(e) shall be notified in writing to the exporter or producer and to the competent authority of the exporting Party prior to the verification visit. Any modification to the information referred to in paragraph 7 (a), (b), (c), (d) and (f) shall be notified under the terms of paragraph 6.

9. If within 30 days of receipt of the notification of the proposed verification visit under paragraph 6, the exporter or producer does not consent in writing to the verification visit, the importing Party may deny preferential tariff treatment to the good or goods that would have been the subject of the verification visit.

10. Each Party shall allow the exporter or the producer whose good or goods are the subject of a verification visit to designate two witnesses who are present during the visit, provided that the witnesses shall speak only in that capacity. Failure by the exporter or producer to designate witnesses shall not result in postponement of the visit.

11. Within 120 days following the conclusion of the verification, the competent authority shall provide a written resolution to the exporter or producer whose good or goods have been the subject of the verification, determining whether or not the good qualifies as originating, which shall include the findings of fact and the legal basis for the determination.

12. When the verification carried out by a Party establishes that the exporter or producer has certified or declared more than once, in a false or unfounded manner, that a good qualifies as originating, the importing Party may suspend the preferential tariff treatment to the identical goods exported or produced by that person, until that person proves that it complies with the provisions of Chapter V (Rules of Origin).

13. Each Party shall provide that, where its competent authority determines that a good imported into its territory does not qualify as originating according to the tariff classification or value applied by that Party to one or more materials used in the production of the good, and this differs from the tariff classification or value applied to the materials by the Party from whose territory the good has been exported, the determination of that Party shall not take effect until it notifies in writing both the importer of the good and the person who has completed and signed the certificate of origin covering the good.

14. The importing Party shall not apply a ruling under paragraph 13 to an importation made before the date on which the ruling becomes effective, provided that the competent authority of the exporting Party has issued an advance ruling under Article 5-02 (Implementing Instruments) on the tariff classification or value of materials on which a person may rely under its laws and regulations.

15. Where a Party denies preferential tariff treatment to a good pursuant to a ruling under paragraph 13, that Party shall postpone the effective date of the denial for a period not to exceed 90 days, provided that the importer of the good or the exporter or producer who has completed and signed the certificate or declaration of origin covering the good establishes that it has relied in good faith, to its detriment, on the tariff classification or value applied to the materials by the competent authority of the exporting Party.

16. Each Party shall maintain the confidentiality of the information gathered in the process of verification of origin in accordance with the provisions of its legislation.

Article 6-08. Review and Challenge.

1. Each Party shall grant the same rights of review and challenge of determinations of origin and advance rulings provided to its importers to exporters or producers of the other Party that:

(a) complete and sign a certificate or declaration of origin covering a good that has been the subject of a determination of origin ruling in accordance with paragraph 11 of Article 6-07; or

(b) have received an advance ruling in accordance with Article 6-10.

2. The rights referred to in paragraph 1 include access to at least one instance of administrative review, independent of the official or agency responsible for the determination or ruling subject to review, and access to one instance of judicial or quasi-judicial review of the determination or decision made in the final instance of administrative review, in accordance with the laws of each Party.

Article 6-09. Sanctions.

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

Article 6-10. Advance Rulings.

1. Each Party shall provide, through its competent authority, for the expeditious issuance of written advance rulings prior to the importation of a good into its territory. Advance rulings shall be issued to the importer or to the exporter or producer in the territory of the other Party, based on the facts and circumstances stated by them, as to whether or not the goods qualify as originating.

2. Advance rulings shall address:

(a) whether the non-originating materials used in the production of a good comply with the corresponding change in tariff classification set out in the Annex to Article 5-03 (Specific Rules of Origin);

(b) whether the good complies with the regional value content requirement set out in Chapter V (Rules of Origin);

(c) whether the method applied by the exporter or producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Code, for the calculation of the transaction value of the good or materials used in the production of a good for which an advance ruling is requested is adequate to determine whether the good meets the regional value content requirement under Chapter V (Rules of Origin);

(d) whether the method applied by the exporter or producer in the territory of the other Party for the reasonable allocation of costs in accordance with the Annex to Article 5-01 (Net Cost) is adequate to determine whether the good meets the regional value content requirement under Chapter V (Rules of Origin);

(e) whether the country of origin marking made or proposed for a good satisfies the requirements of Article 3-11 (Country of Origin Marking); and

(f) such other matters as the Parties may agree.

3. Each Party shall adopt or maintain procedures for the issuance of advance rulings upon publication of advance rulings that include:

(a) the information reasonably required to process the request;

(b) the authority of its competent authority to request additional information from the person requesting the advance ruling at any time during the process of evaluating the request;

(c) a time limit of 120 days for the competent authority to issue the advance ruling, once it has obtained all the necessary information from the person requesting the advance ruling; and

(d) the obligation to explain in a complete, substantiated and reasoned manner to the applicant, the reasons for the advance ruling when it is unfavorable to the applicant.

4. Each Party shall apply advance rulings to imports into its territory as of the date of issuance of the ruling, or such later date as may be specified therein, unless the advance ruling is modified or revoked in accordance with paragraph 6.

5. Each Party shall accord to any person requesting an advance ruling the same treatment, interpretation and application of the provisions of Chapter V (Rules of Origin) relating to the determination of origin as it has accorded to any other person to whom it has issued an advance ruling, where the facts and circumstances are identical in all material respects.

6. The advance ruling may be modified or revoked by the competent authority in the following cases: (a) when it has been founded on any error:

(i) of fact;

(ii) in the tariff classification of the good or materials;

(iii) relating to the compliance of the good with the regional value content requirement;

(b) where it is inconsistent with an interpretation agreed between the Parties or a modification with respect to Article 3-11 (Country of Origin Marking) or Chapter V (Rules of Origin);

(c) when the circumstances or facts on which it is based change; or d) in order to comply with an administrative or judicial decision.

7. Each Party shall provide that any modification or revocation of an advance ruling shall take effect on the date on which it is issued or on a later date specified therein, and may not be applied to imports of a good made before those dates, unless the person to whom it was issued has not acted in accordance with its terms and conditions.

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

9. Each Party shall provide that, when examining the regional value content of a good for which an advance ruling has been issued, its competent authority shall assess whether:

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

(b) the exporter's or producer's operations are consistent with the circumstances and substantial facts underlying the advance ruling; and

(c) the data and supporting calculations used in the application of the method for calculating value or allocating cost are correct in all material respects.

10. Each Party shall provide that, where its competent authority determines that any of the requirements set out in paragraph 9 have not been met, the competent authority may modify or revoke the advance ruling as the circumstances warrant.

11. Each Party shall provide that, where its competent authority decides that the advance ruling was based on incorrect information, the person to whom the advance ruling was issued shall not be penalized if that person demonstrates that it

acted with reasonable care and in good faith in stating the facts and circumstances on which the advance ruling was based.

12. Each Party shall provide that, where an advance ruling is issued to a person who has misrepresented or omitted material facts or circumstances on which the advance ruling is based, or has not acted in accordance with the terms and conditions of the advance ruling, the competent authority issuing the advance ruling may apply such measures as the circumstances warrant.

13. The validity of an advance ruling shall be subject to the continuing obligation of the advance ruling holder to inform the competent authority of any substantial change in the facts or circumstances on which the competent authority relied in making the advance ruling.

Article 6-11. Customs Procedures Working Group.

1. The Parties establish the Customs Procedures Working Group composed of representatives of each Party, which shall meet at least twice a year, as well as at the request of either Party.

2. It shall be the duty of the Working Group

(a) to seek to reach agreement on:

(i) the interpretation, application and administration of this Chapter;

(ii) tariff classification and valuation matters relating to rulings on determinations of origin;

(iii) procedures for the application, approval, issuance, modification, revocation and application of advance rulings;

(iv) modifications to the certificate or declaration of origin referred to in article 6-02; and

(v) any other matter referred by a Party; and

(b) to examine proposals for administrative or operational modifications in customs matters that may affect the flow of trade between the Parties.

Chapter VII. Safeguard Measures

Article 7-01. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

threat of serious injury: the provisions of Article Il, paragraph 6(b) of the Agreement on Safeguards of the GATT 1994;

competent authority: those indicated for each Party in the Annex to this Article; identical good: that which coincides in all its characteristics with the good being compared;

similar good: a good which, although it does not coincide in all its characteristics with the good being compared, has some identical characteristics, especially in its nature, use, function and quality;

serious injury: a general and significant impairment of a domestic industry;

transition period: the period of relief applicable to each good, according to the provisions of the Tariff Relief Program;

domestic industry: the producer or producers of identical, similar or directly competitive goods operating within the territory of a Party and constituting a major proportion of the total domestic production of such goods. Such major proportion may not be less than 40%.

Article 7-02. General Provisions.

The Parties may apply to imports of goods made under the Tariff Relief Program a safeguard regime, the application of which shall be based on clear, strict and time-bound criteria. The Parties may adopt bilateral or global safeguard measures.

Article 7-03. Bilateral Measures.

1. The Parties may adopt and apply bilateral measures if the volume of imports of one or more goods benefiting from the Tariff Discharge Program increases at such a rate and under such conditions as to cause serious injury or threat of serious

injury to the domestic production of identical, like or directly competitive goods, subject to the following rules:

(a) the measures shall be effective only during the transition period;

(b) they may only be adopted when strictly necessary to counteract serious injury or threat of serious injury caused by imports from another Party;

(c) the measures shall be of a tariff nature. The tariff to be determined shall in no case exceed the lesser of the tariff in force against third countries for that good at the time the safeguard measure is taken and the tariff for that good on the day before the entry into force of this Agreement;

(d) the measures may be applied for a maximum period of one year and may be extended for a single consecutive equal period of time; and

(e) upon termination of the application of the bilateral measure, the rate of duty for the good in question shall be the rate of duty applicable to that good as of that date under the Tariff Discharge Schedule.

2. The Party that decides to initiate a procedure that could result in the adoption of a bilateral safeguard measure shall notify the other Party in writing and shall, at the same time, request consultations in accordance with the provisions of Article 7-05.

3. The Party intending to apply a bilateral safeguard measure shall grant to the Party affected by such measure, a mutually agreed compensation, which shall consist of additional tariff concessions, the effects of which on the trade of the exporting Party are equivalent to the impact of the safeguard measure.

4. The compensation referred to in paragraph 3 shall be determined at the stage of prior consultations referred to in paragraph 2.

5. If the Parties are unable to agree on compensation, the Party proposing to take the measure shall have the authority to do so and the Party affected by the measure may impose tariff measures that have trade effects equivalent to those of the measure taken.

Article 7-04. Global Measures.

1. The Parties retain their rights and obligations to apply safeguard measures under Article XIX of the GATT.

2. When a Party decides to adopt a safeguard measure under Article XIX of the GATT, it may apply it to the other Party only when it determines that imports of goods originating in that Party, taken individually, account for a substantial part of total imports and contribute importantly to the serious injury or threat of serious injury to the importing Party.

3. Such determination shall take into account, inter alia, the following criteria:

(a) imports of goods originating in the other Party shall be considered to be substantial if they are included within the imports of the principal countries supplying the good subject to the proceeding, whose exports account for 80 per cent of the total imports of that good into the importing Party;

(b) imports of goods originating in a Party shall not normally be considered to contribute substantially to serious injury or threat of serious injury if their rate of growth during the period in which the injurious increase in imports is substantially less than the rate of growth of total imports from all sources during the same period;

(c) changes in the Party's share of total imports and the volume of imports shall also be taken into account in the determination of material participation in serious injury or threat of serious injury.

4. In no case may the importing Party apply the measures provided for in paragraph 2 without prior written notice to the other Party and without consultations. For this purpose, all the notification and procedural requirements provided for in this Chapter shall be complied with.

5. The Party intending to apply a comprehensive safeguard measure shall grant the Party affected by that measure mutually agreed compensation in the form of concessions having trade effects equivalent to the impact of the safeguard measure.

6. The compensation referred to in paragraph 5 shall be determined at the stage of prior consultations referred to in paragraph 4.

7. If the Parties are unable to agree on the compensation, the Party proposing to take the measure shall have the authority to do so and the affected Party may impose measures that have trade effects equivalent to those of the measure taken.

Article 7-05. Procedure.

1. Each Party shall establish clear and strict procedures for the adoption and application of safeguard measures in accordance with the provisions of this Chapter.

2. In order to determine the appropriateness of the application of a safeguard measure, the competent authority of the importing Party shall conduct the relevant investigation.

3. The Party that decides to initiate a procedure to adopt safeguard measures shall publish the initiation thereof through the appropriate official channels and shall notify the exporting Party in writing on the day following publication.

4. For the purpose of determining serious injury or threat thereof, the competent authorities shall evaluate all factors of an objective and quantifiable nature having a bearing on the affected domestic industry, in particular the rate and amount of the increase in imports of the good in question, in absolute and relative terms, the share of the domestic market absorbed by the increase in imports, changes in the level of sales, domestic prices, production, productivity, utilization of installed capacity, market share, profits, losses and employment.

5. In order to determine the appropriateness of the safeguard measures, a direct causal relationship shall also be demonstrated between the increase in imports of the product concerned and the serious injury or threat of serious injury to the domestic industry.

6. If factors other than increased imports from another Party are injuring or threatening to injure a domestic industry at the same time, such injury or threat of injury shall not be attributed to the said imports.

7. If as a result of this investigation the competent authority determines, on the basis of objective evidence, that the conditions provided for in this Chapter are met, the importing Party may enter into consultations with the other Party.

8. The consultation procedure shall not oblige the Parties to disclose information that has been provided on a confidential basis, the disclosure of which could impede compliance with the laws of the Party governing the matter or harm commercial interests. Notwithstanding the foregoing, the importing Party that intends to apply the safeguard measure shall provide the other Party with a non-confidential summary of the information that is confidential.

9. The period of prior consultations shall begin on the day following receipt by the exporting Party of the notification of the request for the initiation of consultations. This period shall be 60 days, unless the Parties agree on a shorter period.

10. The notification referred to in paragraph 9 shall be made through the competent authority and shall contain sufficient background information to support the application of the measures, including:

(a) the names and available addresses of the domestic producers of identical, similar or directly competitive goods representative of the domestic production, their share in the domestic production of that good and the reasons that lead them to claim that they are representative of that sector;

(b) a clear and complete description of the good subject to the procedure, the tariff subheading under which it is classified and the tariff treatment in force, as well as the description of the identical, similar or direct competitor good;

(c) import data for each of the three most recent years that provide the basis that such good is being imported in increasing quantities, either in absolute terms or relative to domestic production;

(d) data on the total domestic production of the identical, similar or directly competitive good for the last three years;

(e) data demonstrating serious injury caused or threat of serious injury that may be caused by imports to the sector in question in accordance with the data referred to in subparagraphs c) and d);

(f) an enumeration and description of the alleged causes of the serious injury or threat of serious injury, based on the information required under subparagraphs a) to d) and a summary of the basis for alleging that the increase in imports of that good in relative or absolute terms of the domestic production is the cause thereof,

(g) the criteria and objective information demonstrating that the conditions set out in this Chapter for the application of a global measure to the other Party are met, where applicable; and

(h) information on the tariff measures to be adopted and their duration.

11. The measures provided for in this Chapter may be adopted only after the prior consultation period has been concluded.

12. During the period of prior consultations, the exporting Party shall make any observations it deems pertinent, in

particular on the appropriateness of the proposed measures.

13. If the importing Party determines that the reasons that gave rise to the application of the safeguard measures still exist, it shall notify the competent authorities of the other Party of its intention to extend them, at least 60 days prior to the expiration of the validity of such measures, and shall provide the information supporting this decision, including evidence that the reasons that led to the adoption of the safeguard measure still exist. Notification, prior consultations on the extension and the respective compensation shall be carried out in accordance with the terms provided in this Chapter.

Chapter VIII. Unfair International Trade Practices

Article 8-01. Definitions.

For the purposes of this chapter, the following definitions shall apply:

investigation: an investigation procedure on unfair international trade practices;

interested party: the complaining producers, importers, exporters of the goods subject to investigation, as well as any national or foreign person having a direct interest in the investigation in question, and includes the government of the Party whose goods are subject to an investigation on subsidies;

final determination: the determination of the competent authority that determines whether or not the imposition of definitive countervailing duties is appropriate;

initial determination: the determination of the competent authority formally declaring the initiation of an investigation;

preliminary resolution: the resolution of the competent authority that determines the continuation of an investigation and, if applicable, whether or not the imposition of provisional countervailing duties is appropriate; preliminary resolution: the resolution of the competent authority that determines the continuation of an investigation and, if applicable, whether or not the imposition of provisional countervailing duties is appropriate;

direct export subsidies: those classified as prohibited subsidies by the Agreement on Subsidies and Countervailing Measures of GATT 1994.

Article 8-02. General Principle.

The Parties reject all unfair international trade practices and recognize the need to eliminate export subsidies and other trade-distorting domestic policies.

Article 8-03. Direct Export Subsidies.

1. Neither Party shall grant new direct subsidies on the export of goods to the territory of the other Party.

2. Upon entry into force of this Agreement, each Party shall eliminate all direct subsidies on the export of goods to the territory of the other Party.

Article 8-04. Principles for the Application of Domestic Legislation.

1. The Parties shall apply their legislation on unfair international trade practices in a manner consistent with the provisions of this Chapter and with the provisions and procedures set out in the Agreement on Implementation of Article VI of the GATT, and in the Agreement on Implementation of Articles VI, XVI and XXIII of the GATT.

2. The Parties shall conduct investigations through the competent national public agencies, agencies or entities, and shall not apply in their bilateral relations any international instrument on this matter negotiated with third countries that involves asymmetrical, non-reciprocal treatment and that departs from the provisions of this Chapter.

Article 8-05. Publication of Resolutions.

The Parties shall publish in their official organs of diffusion the resolutions of initiation, preliminary and final, those that declare the investigation concluded for reasons of commitments of the foreign exporter or, as the case may be, of the government of the exporting Party, or for the holding of conciliatory hearings, as well as the resolutions by which the complaints are rejected or the withdrawals of the complainants are accepted.

Article 8-06. Notifications and Time Limits.

1. The Parties shall ensure that during the investigation and, prior to the application of provisional and definitive countervailing duties, the respective authorities shall notify in writing directly, in a timely manner and within reasonable time limits, the interested parties known to them and the competent authority of the other Party of the determinations on the matter, so that those affected by the application of such duties may present arguments and evidence in their defense.

2. Notifications to the denounced exporters shall be made on the working day following the date of publication of the initial resolution and shall contain the following information:

(a) the deadlines for the submission of reports, declarations and other documents;

(b) the place where the complaint and other documents submitted during the investigation may be inspected; and

(c) the name, address and telephone number of the office where additional information may be obtained.

3. With the notification referred to in paragraph 1, a copy of the respective publication of the official organ of diffusion of the Party conducting the investigation shall be sent, as well as a copy of the written complaint, and of the public version of its annexes.

4. The competent authorities of each Party shall grant the interested parties a minimum period of 30 working days to respond, counted from the publication of the initial resolution, in order for them to appear and state what they deem appropriate. The same period shall be granted for the same purposes to the interested parties, counted from the publication of the preliminary determination.

5. The initiating, preliminary or final resolutions shall contain, where appropriate, at least the following:

(a) the name of the complainant;

(b) the indication of the imported good subject to the investigation and its tariff classification;

(c) the elements and evidence used for the determination of the existence of dumping or subsidy, injury or threat of injury and their causal relationship;

(d) the factual and legal considerations that led the competent authority to initiate an investigation or to impose a countervailing duty; and

(e) any legal argumentation, data, fact or circumstance contained in the administrative record in which the determination in question is based and motivated.

Article 8-07. Rights and Obligations of the Interested Parties.

The Parties shall ensure that the interested parties have the same rights and obligations in an investigation.

Article 8-08. Conciliation Hearing.

At the formal initiation of any investigation, the interested parties may request the competent authorities to hold a conciliation hearing. In this hearing, formulas for solution and conclusion of the investigation may be proposed, which, if appropriate, shall be sanctioned by the competent authority itself and incorporated in the respective resolution, which shall have the character of a final resolution. This resolution shall be notified to the interested parties and published in the official organ of diffusion of the investigating Party.

Article 8-09. Preliminary Determination.

1. Within a period of 130 working days, but in no case earlier than 45 working days, counted from the date of publication of the initial determination, the competent authority shall issue a preliminary determination in which it determines that

(a) that the investigation is terminated, in which case, it shall have the character of a final resolution;

b) that it is appropriate to continue with the investigation and the amount of the provisional antidumping duties; or

c) that it is appropriate to continue with the investigation without the imposition of provisional countervailing duties.

2. When the preliminary determination determines the imposition of a provisional countervailing duty, it shall include, in addition to the provisions of paragraph 5 of Article 8-06, the margin of dumping or subsidy and its components, a description of the injury or threat of injury and the methodology followed to determine them.

Article 8-10. Clarifications.

Once a provisional or definitive antidumping duty has been imposed, the interested parties may request the competent authority to determine whether a particular good is subject to the antidumping duty imposed or to clarify any aspect of the corresponding determination.

Article 8-11. Review of Duties.

In the event of a change of circumstances, the final antidumping duties may be reviewed by the competent authority, annually at the request of a party, and at any time if they are ex officio. Likewise, any producer, importer or exporter who, without having participated in the investigation, proves his direct interest, may request the review of an antidumping duty.

2. The review may have as an effect the ratification, modification or elimination of the corresponding duties. For this purpose, the corresponding substantive and procedural provisions of this Chapter shall be observed.

Article 8-12. Automatic Elimination of Definitive Countervailing Duties.

Final antidumping duties shall be automatically eliminated when, after five years from their effective date or from the date of their last review, they have not been reviewed pursuant to Article 8-10.

Article 8-13. Dispatch of Copies.

Each interested party shall send copies of each of the reports, documents and evidence submitted to the investigating authority in the course of the investigation, excluding confidential information, to the other interested parties in a timely manner.

Article 8-14. Information Gathering.

1. The investigating authority of the importing Party, upon request of the interested parties, shall conduct information meetings, for the purpose of making known all relevant information on the content of the preliminary and final determinations.

2. With respect to preliminary determinations, the request referred to in paragraph 1 may be submitted at any time during the investigation. In the case of final determinations, the request for information gathering shall be submitted within five days of their publication in the official organ of dissemination of the Party. In both cases, the competent authority shall conduct the information gathering within 15 days of the submission of the request.

3. At the information meetings referred to in paragraphs 1 and 2, the interested parties shall have the right to review the technical reports, methodology, calculation sheets and any other element on which the corresponding resolution has been based, with the exception of confidential information.

Article 8-15. Public Hearings.

1. The competent authority shall hold, ex officio or at the request of a Party, a public hearing in which the interested parties may appear and question their counterparts regarding the information or means of evidence that the investigating authority deems appropriate.

2. The competent authority shall give 15 working days notice of the public hearing.

3. The competent authority shall give the interested parties the opportunity to present arguments after the public hearing, even if the period for the presentation of evidence has ended. The pleadings shall consist of the presentation in writing of conclusions regarding the information and arguments provided in the investigation.

Article 8-16. Access to Confidential Information.

The competent authorities of each Party shall, in accordance with its legislation, allow access to confidential information,

where reciprocal conditions exist in the other Party with respect to access to such information.

Article 8-17. Access to Non-confidential Information.

The competent authority of each Party shall provide interested parties with timely access to non-confidential information contained in the administrative records of any other investigation, within a period not to exceed 60 days from the publication of the final determination of such investigations, in accordance with the provisions of its legal system. If other administrative or judicial remedies have been filed against the final determination, the Parties shall provide such access to non-confidential information in accordance with their legal system.

Article 8-18. Exchange of Information Through the Commission.

In order to expedite the investigations that are presented on unfair international trade practices, an exchange of information shall be carried out through the Commission.

Article 8-19. Refund of Amounts Paid In Excess.

If a final determination determines an antidumping duty lower than the provisional antidumping duty, the competent authority of the importing Party shall refund the amounts paid in excess.

Article 8-20. Dispute Settlement.

Where the final decision of an arbitral tribunal, rendered pursuant to Chapter XIX (Dispute Settlement), declares that the application of an antidumping duty by a Party is inconsistent with any provision of this Chapter, the importing Party shall cease to apply or shall adjust the antidumping duty in question to the respective goods of the complaining Party.

Chapter IX. General Principles on Trade In Services

Article 9-01. Definitions.

For the purposes of this chapter, the following definitions shall be understood as:

professional practice: the customary performance of any professional act or the rendering of any service proper to each profession that requires governmental authorization;

enterprise of a Party: an enterprise constituted or organized under the law of a Party, including branches located in the territory of a Party that carries out economic activities in that territory;

service supplier of a Party: a person of a Party that provides or intends to provide a service; quantitative restriction: a non-discriminatory measure imposing limitations on:

(a) the number of service suppliers, whether through a quota, monopoly or economic necessity test or by any other quantitative means; or

(b) the operations of any service supplier, whether through a quota or economic necessity test, or by any other quantitative means;

professional services: services which, for their supply, require higher secondary education, specialized higher education, or equivalent training or experience and the exercise of which is authorized or restricted by a Party, but does not include services supplied by persons engaged in a trade or by merchant ship or aircraft crews.

Article 9-02. Scope of Application.

1. This Chapter applies to measures that a Party adopts or maintains on trade in services conducted by service suppliers of the other Party, including those relating to:

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

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

(c) access to and use of distribution and transportation systems related to the supply of a service;

(d) access to and use of public telecommunications networks and services;

(e) the presence, in its territory, of a service supplier of the other Party; and

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

2. This Chapter does not apply to:

(a) domestic or international air transport services, with and without a fixed itinerary, as well as ancillary activities in support of air services, except:

(i) aircraft repair and maintenance services during the period when an aircraft is removed from service;

(ii) specialized air services; and

(iii) computerized reservation systems;

(b) financial services;

(c) subsidies or grants provided by a Party or by a State enterprise, including loans, guarantees and insurance supported by governmental entities; or

(d) government services or functions such as law enforcement, social rehabilitation services, income insurance, social security or insurance, social welfare, public education, public training, health and child care.

3. For the purposes of this chapter, any reference to federal or central and state or departmental governments includes non-governmental bodies exercising regulatory, administrative or other governmental powers delegated to them by those governments.

4. For purposes of this Agreement, trade in services means the supply of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a consumer of the other Party;

(c) through the presence of service suppliers of a Party in the territory of the other Party;

(d) by natural persons of a Party in the territory of the other Party.

5. Nothing in this Chapter shall be construed to:

(a) to impose any obligation on a Party with respect to a national of the other Party who seeks to enter its labor market or who has permanent employment in its territory, or to confer any right on such a national, with respect to such access or employment; or

(b) impose any obligation or right on a Party with respect to government procurement by another Party or state enterprise.

Article 9-03. National Treatment.

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that accorded, in like circumstances, to its services and service suppliers.

Article 9-04. Most-Favored-Nation Treatment.

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that accorded, in like circumstances, to services and service suppliers of the other Party or of any non-Party.

2. The provisions of this Chapter shall not be construed to prevent a Party from conferring or granting advantages to adjacent countries for the purpose of facilitating trade in services that are produced and consumed locally in contiguous border areas.

Article 9-05. Local Presence.

1. No Party shall require a service supplier of the other Party to establish or maintain a representative office or other business, or to reside in its territory, as a condition for the supply of a service.

2. Notwithstanding paragraph 1, a service supplier of a Party that chooses to establish itself in the territory of the other Party shall comply with the laws and regulations of that Party.

Article 9-06. Consolidation of Measures.

1. No Party shall increase the degree of non-conformity of its measures upon entry into force of this Agreement with respect to Articles 9-03 through 9-05. No amendment of any such measure shall diminish the degree of conformity of such measure as it was in effect immediately prior to the amendment.

2. Within one year of the entry into force of this Agreement, the Parties shall list in Annex 1 to this Article the measures referred to in paragraph 1.

3. The provisions of Articles 9-03 through 9-05 shall not apply to any non-conforming measure adopted or maintained by a Party with respect to the activities listed in Annex 2 to this Article at the time of signature of this Agreement. After a period of two years following the entry into force of this Agreement, any measure adopted by a Party may not be more restrictive than those existing at the end of this Agreement. The Parties, in adopting or maintaining such non-conforming measures, shall seek to achieve an overall balance in their obligations.

4. For state and departmental measures inconsistent with Articles 9-03 to 9-05, the period for listing them in Annex 1 to this Article shall not exceed two years from the date of entry into force of this Agreement.

5. The Parties are not required to register local or municipal measures.

Article 9-07. Quantitative Restrictions.

1. The Parties shall endeavor to negotiate, at least every two years, the liberalization or elimination of quantitative restrictions existing at the time of entry into force of this Agreement or those adopted subsequently at the federal or central and state or departmental levels.

2. Within one year of the entry into force of this Agreement, the Parties shall inscribe in the Annex to this Article the quantitative restrictions referred to in paragraph 1.

3. Each Party shall notify the other Party of any quantitative restrictions, other than those at the local or municipal government level, that it adopts after the entry into force of this Agreement, and shall inscribe the restriction in the Annex to this Article.

Article 9-08. Future Liberalization.

Through future negotiations to be convened by the Commission, the Parties shall deepen the liberalization achieved in the different services sectors, with a view to achieving the elimination of the measures inscribed in Annexes 1 and 2 to Article 9-06 in accordance with paragraphs 2 to 4 of that Article for an overall balance in commitments.

Article 9-09. Liberalization of Non-discriminatory Measures.

Each Party may negotiate the liberalization of quantitative restrictions, licensing requirements and other non- discriminatory measures. The Parties shall inscribe the commitments acquired in the Annex to this Article.

Article 9-10. Procedures.

The Parties shall establish procedures for:

(a) a Party to notify the other Party and include in the appropriate annex:

(i) federal or central measures, in accordance with paragraphs 2 and 3 of Article 9-06;

(ii) state or departmental measures, in accordance with paragraph 4 of Article 9-06;

(iii) non-discriminatory quantitative restrictions, in accordance with Article 9-07;

(iv) commitments under Article 9-09; and

(v) modifications to the measures referred to in Article 9-06; and (vi) modifications to the measures referred to in Article 9-

09.

(b) the conclusion of future negotiations aimed at perfecting the overall liberalization of services between the Parties, in accordance with Article 9-08.

Article 9-11. Technical Cooperation.

From the entry into force of this Agreement, the Parties shall establish a system to provide service suppliers with information concerning their markets in relation to:

(a) the commercial and technical aspects of the supply of services;

(b) the possibility of obtaining services technology; and

(c) those aspects that the Commission considers relevant on this subject.

Article 9-12. Recognition of Professional Qualifications and Licensing.

1. With a view to ensuring that any measure that a Party adopts or maintains with respect to the requirements and procedures for the granting of licenses and the recognition of qualifications to nationals of the other Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that such measures:

(a) are based on objective and transparent criteria, such as ability and fitness to provide a service;

(b) are no more burdensome than necessary to ensure the quality of a service; and

(c) do not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party revalidates, unilaterally or by agreement with another country, licenses or professional qualifications obtained in the territory of the other Party or of any non-Party:

(a) nothing in Article 9-04 shall be construed to require that Party to revalidate studies, licenses or professional qualifications obtained in the territory of the other Party; and

(b) that Party shall provide the other Party with adequate opportunity to demonstrate that studies, licenses or professional qualifications obtained in the territory of that other Party shall also be revalidated, or to negotiate or enter into an agreement having equivalent effect.

3. Each Party shall, within two years of the entry into force of this Agreement, eliminate any nationality or permanent residence requirements it maintains for the licensing of professional service suppliers of the other Party. Where a Party fails to comply with this obligation with respect to a particular sector, the other Party may maintain, in the same sector and for as long as the non-complying Party maintains its requirement, as the sole remedy, a requirement equivalent to that indicated in its Schedule to the Annex to this Article or reinstate:

(a) any such requirement at the federal or central level that it has eliminated under this Article; or

(b) any such requirements at the state or departmental level that had been in effect on entry into force of this Agreement, by notification to the Party in breach.

4. The Annex to this Article sets out procedures for the recognition of education, experience and other standards and requirements governing professional service suppliers.

Article 9-13. Denial of Benefits.

A Party may deny benefits under this Chapter to a service supplier of the other Party, after notification and consultations, where the Party determines that the service is being supplied by an enterprise owned or controlled by persons of a non-Party; and

(a) the enterprise is not engaged in substantial business activities in the territory of any Party; or

(b) the Party denying the benefits:

(i) does not maintain diplomatic relations with the non-Party; and

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

Article 9-14. Other Disciplines.

1. The Commission shall determine the procedures for the establishment of disciplines necessary to regulate:

(a) safeguard measures; and

(b) the imposition of countervailing duties.

2. For the purposes of paragraph 1, the Commission shall monitor the work carried out by the relevant international organizations and, where appropriate, take them into account.

Article 9-15. Relationship with Multilateral Agreements on Services.

1. The Parties undertake to apply among themselves the provisions contained in the multilateral agreements on services to which the Parties are parties.

2. Notwithstanding the provisions of paragraph 1, in the event of incompatibility between the provisions of such agreements and those of this Agreement, the latter shall prevail to the extent of the incompatibility.

Chapter X. Telecommunications

Article 10. Definitions.

For the purposes of this Chapter, the following definitions shall spply:

intracorporative communications: the telecommunications through which a company communicates:

a) internally or with its subsidiaries, branches and subsidiaries as defined by each Party, or between them; or

b) in a non-commercial manner, with all persons of fundamental importance for the economic activity of the company, and who maintain a continuous contractual relationship with it, but does not include telecommunications services that are provided to third parties other than those described;

Authorized equipment: terminal or other equipment that has been approved to connect to the public telecommunications network in accordance with the procedures for assessing the conformity of a Party;

terminal equipment: any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals through electromagnetic means and which is connected to the public telecommunications network at a terminal point;

standardization measure: a "standardization measure", as defined in chapter XIII (Standardization measures);

conformity assessment procedure: a "conformity assessment procedure", as defined in chapter XIll (Standardization measures);

protocol: a set of rules and formats that govern the exchange of information between two peer entities, for purposes of the transfer of information of signals or data;

terminal point of the network: the final demarcation of the public telecommunications network in the user's facilities;

private network: a telecommunications network that establishes a person with its own infrastructure or by leasing channels or circuits of public telecommunications networks for the use of their internal communications or those substantially related to their productive process or services;

public telecommunications network: the physical infrastructure that allows the provision of public telecommunications services;

broadcasting services: the broadcasting services of radio and television programs;

value-added services : telecommunications services that employ computerized processing systems that:

a) act on the format, content, code, protocol or similar aspects of the information transmitted from the user;

b) provide the client with additional, different or restructured information; or

c) involve the user's interaction with stored information;

public telecommunications service : any fixed or mobile telecommunications service that a Party obliges explicitly or in fact, to be offered to the public in general and that, usually, involves the transmission in real time of information provided by the client between two or more points, without change "from point to point" in the form or content of the user's information;

Fixed rate: the pricing based on a fixed amount per period, regardless of the amount of use; telecommunications: the transmission and reception of signals by any electromagnetic means.

Article 10-02. Scope of Application.

1. Recognizing the dual role of telecommunications services, as a specific sector of economic activity and as a means of providing services for other economic activities, this chapter applies to:

a) the measures adopted or maintained by a Party, related to the provision of public telecommunications services;

b) the measures adopted or maintained by a Party, related to access to public telecommunications networks or services and their continuous use by persons of the other Party, including their access and use when operating private networks to carry out intracorporate communications;

c) the measures adopted or maintained by a Party on the provision of value-added services by persons of the other Party in the territory of the first or across its borders;

d) measures relating to standardization with respect to the connection of terminal equipment or other equipment to public telecommunications networks.

2. Nothing in this chapter shall be construed as:

a) compel any Party to authorize a person of the other Party to establish, build, acquire, lease, operate or supply telecommunications networks or services;

b) compel any Party to establish, build, acquire, acquire, lease, operate or supply public telecommunications networks or services that are not offered to the general public;

c) allow a Party to require a person to establish, build, acquire, lease, operate or supply public telecommunications networks or services that are not offered to the general public;

d) prevent any Party from prohibiting persons operating private networks from using these networks to supply public telecommunications networks or services to third parties; or

e) compel a Party to require any person who broadcasts or distributes by cable television or radio programs, to offer its broadcasting or cable facilities as a public telecommunications network.

3. Notwithstanding the provisions of paragraph 2, in case of emergency, the operators of the telecommunications services of the Parties shall collaborate with the authorities in the transmission of the communications they require, fora prudential period of time.

Article 10-03. Access to Public Telecommunications Networks and Services and Their Use.

1. Each Party shall ensure that any person of the other Party has access to and can make use of any public telecommunications network or service, including leased private circuits, offered in its territory or cross-border on reasonable terms and conditions and non-discriminatory, for the conduct of their business, as specified in paragraphs 2 to 8.

2. Subject to the provisions of paragraphs 7 and 8, each Party shall ensure that the persons of the other Party are allowed to:

a) purchase or lease and connect the terminal equipment or other equipment that interfaces with the public telecommunications network, which does not technically affect that network or degrade it;

b) interconnect private networks, leased or owned, with public telecommunications networks in that Party's territory or

across its borders, including access by direct dialing to its users or customers and from them, or with leased or proprietary circuits another person, on terms and conditions mutually accepted by those persons, in accordance with the provisions in force in each Party;

c) perform switching, signaling and processing functions; AND d) use the operating protocols they choose.

3. Each Party shall endeavor to:

a) the pricing for public telecommunications services reflects the economic costs directly related to the provision of those services; and

b) Leased private circuits are available on the basis of a fixed fee or described by the tariff mechanism in force in each Party.

4. Nothing in paragraph 3 shall be interpreted as preventing cross subsidies between public telecommunications services.

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

6. The Parties may adopt any measure necessary to ensure the confidentiality and security of the messages and the protection of the privacy of the subscribers of public telecommunications networks or services.

7. Each Party shall ensure that no more conditions are imposed on access to and use of public telecommunications networks or services than those necessary to:

a) safeguard the responsibilities of the public service of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the general public; or

b) protect the technical integrity of networks or public telecommunications services.

8. Provided that the conditions for access to public telecommunications networks or services and their use comply with the guidelines established in paragraph 7, those conditions may include:

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

b) requirements to use specific technical interfaces, including interface protocols for interconnection with the aforementioned networks or services;

c) restrictions on the interconnection of private, leased or owned circuits with the aforementioned networks or services, or with leased or owned circuits of another person, which are used for the supply of public telecommunications networks or services;

d) procedures for granting concessions, licenses, permits or registrations that, if adopted or maintained, are transparent and whose application process is resolved expeditiously; and

e) restrictions on use in situations that endanger national security due to activities related to drug trafficking or other illicit activities.

Article 10-04. Conditions for the Provision of Value-added Services.

1. Considering the strategic role of value-added services to increase the competitiveness of all economic activities, the Parties establish the necessary conditions for their provision, taking into account the procedures and information required for this purpose.

2. Each Party shall ensure that:

a) any procedure adopted or maintained to grant permits or registrations regarding the provision of value-added services is transparent and non-discriminatory and that requests are processed expeditiously; and

b) the information required under these procedures is limited to that necessary to prove that the applicant has the financial and technical capacity to initiate the provision of the service, or that the services or terminal equipment or other equipment of the applicant comply with the measures of applicable standardization of the Party.

3. No Party may require a provider of value-added services:

a) provide these services to the general public, when they have been hired by specific users or oriented to them under

defined technical conditions;

b) justify your rates according to your costs;

c) interconnect your networks with any particular client or network; or

d) satisfy any particular standardization measure, for an interconnection other than interconnection with a public telecommunications network.

4. Each Party may require the registration of fees to:

a) a service provider, in order to correct a practice of this provider that the Party, in accordance with its legislation, has considered, in a particular case, as contrary to competition; or

b) a monopoly to which the provisions of article 10-06 apply.

Article 10-05. Standardization Measures.

1. Each Party shall ensure that its standardization measures that relate to the connection of terminal equipment or other equipment to public telecommunications networks, including those measures that relate to the use of test and measurement equipment for the evaluation procedure of the conformity, are adopted or maintained only to the extent necessary for:

a) avoid technical damage to public telecommunications networks;

b) avoid technical interference with public telecommunications services or their deterioration;

c) avoid electromagnetic interference and ensure compatibility with other uses of the electromagnetic spectrum;

d) prevent billing equipment from malfunctioning; or

e) guarantee the user's security and access to public telecommunications networks or services.

2. The Parties may establish the approval requirement for the connection of terminal equipment or other equipment that is not authorized to the public telecommunications network, provided that the approval criteria are compatible with the provisions of paragraph 1.

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

4. Telecommunications, based on the criteria established in paragraph 1, neither Party shall require additional authorization for the equipment that is connected to the consumer's side.

5. Each Party:

a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that requests submitted for this purpose are processed expeditiously;

b) the required testing of terminal equipment or other equipment that is to be connected to public telecommunications networks, in accordance with the Party's conformity assessment procedures, subject to the Party's right to review the accuracy and integrity of test results; AND

c) ensure that measures adopted or maintained to authorize persons acting as agents of suppliers of telecommunications equipment before the competent bodies of conformity assessment of the Party are not discriminatory.

6. Not later than two years from the entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, the necessary provisions to accept the results of the tests, based on its measures and procedures, carried out by the laboratories that are in the territory of the other Party.

7. The Telecommunications Subgroup established in accordance with numeral iii) of letter a) of Article 13-17 (Working Group on Standardization Measures) will be responsible for implementing the guidelines contained in this chapter, ina manner consistent with the corresponding provisions of chapter XIll (Standardization measures).

Article 10-06. Monopolies.

1. When a Party maintains or establishes a monopoly to provide public telecommunications networks and services and the monopoly competes, directly or through subsidiaries, in the manufacture or sale of telecommunications goods, in the provision of value-added services or other services of telecommunications, the Party shall ensure that the monopoly does not use its monopolistic position to engage in anti-competitive practices in those markets, either directly or through dealings with its subsidiaries, in a manner that disadvantageously affects a person of the other party. These practices may include cross subsidies, predatory behavior and discriminatory access to networks and public telecommunications services.

2. Each Party shall introduce or maintain effective measures to prevent the anti-competitive conduct referred to in paragraph 1, such as:

a) accounting requirements;

b) structural separation requirements;

c) rules to ensure that the monopoly grants its competitors access to its networks or telecommunications services and their use, in terms and conditions no less favorable than those granted to itself or its subsidiaries; or

d) rules to ensure timely disclosure of the technical changes of public telecommunications networks and their interfaces.

3. The Parties shall exchange information on the measures referred to in paragraph 2 in a timely manner.

Article 10-07. Relationship with International Organizations and Agreements.

1. the Parties Shall Endeavor to Stimulate the Role of Regional and Subregional Organizations and Promote Them as Forums to Promote the Development of Telecommunications In the Region.

2. The Parties, recognizing the importance of international standards for achieving global compatibility and interoperability of telecommunications networks or services, undertake to apply those standards through the work of relevant international organizations, such as the International Telecommunication Union and the International Organization for Standardization.

Article 10-08. Technical Cooperation and other Consultations.

In order to stimulate the development of interoperable telecommunications infrastructure and services, the Parties will cooperate in the exchange of technical information, in the development of the sector's human resources, and in the creation and implementation of business exchange programs, academic and intergovernmental. The Parties establish the High Level Technical Group, constituted by representatives of the pertinent entities and in charge of implementing the obligations arising from this paragraph. This Group will be installed no later than six months after the entry into force of this Agreement.

Article 10-09. Transparency.

In addition to the provisions of Article 17-02 (Publication), each Party shall make available to the public and to the other Party the measures relating to access to public telecommunications networks or services and their use, including measures regarding:

a) rates and other terms and conditions of service;

b) specifications of the technical interfaces with these services and networks;

c) information on the bodies responsible for the preparation and adoption of standardization measures that affect such access and use;

d) conditions applicable to the connection of terminal or other equipment to the public telecommunications network; and

e) concession, permit, registration or license requirements.

Article 10-10. Relationship with other Chapters.

In case of incompatibility between a provision of this chapter and another chapter, that of this chapter shall prevail to the extent of the incompatibility.

Chapter XI. Temporary Entry of Business Persons

Article 11-01. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

temporary entry: the entry of a business person of one Party into the territory of the other Party, without the intention of establishing permanent residence;

national: as defined in the Annex to this Article for the Parties indicated therein;

business person: a national of a Party who engages in trade in goods or services, or in investment activities;

in force: the binding quality of the legal provisions of the Parties at the time of entry into force of this Agreement.

Article 11-02. General Principles.

The provisions of this Chapter reflect the preferential commercial relationship between the Parties, the convenience of facilitating the temporary entry of business persons in accordance with the principle of reciprocity, and the need to establish transparent criteria and procedures for such purpose. They also reflect the need to ensure border security and to protect the labor of their nationals and permanent employment in their respective territories.

Article 11-03. General Obligations.

1. Each Party shall apply the measures relating to this Chapter in accordance with Article 11-02 and in an expeditious manner to avoid undue delay or prejudice to trade in goods and services or investment activities covered by this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the application of this Chapter.

Article 11-04. Authorization of Temporary Entry.

1. Each Party shall authorize, in accordance with the provisions of this Chapter, the temporary entry of business persons who comply with other applicable measures relating to health, public safety and national security.

2. A Party may deny the issuance of a migration document authorizing employment to a business person, when his temporary entry adversely affects:

(a) the settlement of any labor dispute existing in the place where he is employed or is to be employed; or

(b) the employment of any person involved in such dispute.

3. Where, in accordance with paragraph 2, a Party refuses to issue a migration document authorizing employment, that Party shall:

(a) shall inform the business person concerned in writing of the reasons for the refusal; and

(b) promptly notify in writing the Party whose national is refused entry of the reasons for the refusal.

4. Each Party shall limit the amount of the fee for processing an application for temporary entry to the approximate cost of the processing services provided.

Article 11-05. Availability of Information.

1. In addition to the provisions of Article 17-02 (Publication), each Party shall:

(a) shall provide the other Party with materials to enable it to become acquainted with the measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available, both in its territory and in the territory of the other Party, a consolidated document containing materials explaining the requirements for temporary entry under this Chapter, so as to enable business persons of the other Party to become acquainted with them.

2. Each Party shall compile, maintain and make available to the other Party, in accordance with its law, information relating

to the granting of temporary entry authorizations in accordance with this Chapter. This compilation shall include information specific to each occupation, profession or activity.

Article 11-06. Working Group.

1. The Parties establish a Working Group on Temporary Entry, composed of representatives of each Party, including migration officials.

2. The Working Group shall meet at least once a year to review:

(a) the implementation and administration of this Chapter;

(b) the development of measures to further facilitate the temporary entry of business persons in accordance with the principle of reciprocity;

(c) the exemption from labor certification tests or procedures of similar effect for the spouse of a person who has been authorized temporary entry for more than one year pursuant to section B or C of the Annex to section 11-04; and

(d) proposed amendments or additions to this chapter.

Article 11-07. Settlement of Disputes.

1. The Parties may not initiate the procedures provided for in Article 19-05 (Intervention by the Commission - Good Offices, Conciliation and Mediation), with respect to a denial of temporary entry authorization under this Chapter, or any particular case concerning the application of the provisions of Article 11-03, unless:

(a) the matter concerns a recurring practice; and

(b) the person concerned has exhausted the administrative remedies available to him or her with respect to that particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed exhausted when the competent authority has not issued a final decision within one year from the initiation of the administrative procedure and the decision has not been delayed for reasons attributable to the business person concerned.

Article 11-08. Relationship with other Chapters.

Except as provided in this Chapter and Chapters | (Initial Provisions), XVII (Transparency) and XIX (Dispute Settlement), nothing in this Agreement shall impose any obligation on the Parties with respect to their immigration measures.

Chapter XII. Financial Services

Article 12-01. Definitions.

For the purposes of this chapter, the following definitions shall apply:

regulatory authority: any governmental entity that exercises supervisory authority over financial service suppliers or financial institutions;

public entity: a central bank or monetary authority of a Party, or any financial institution of a public nature owned or controlled by a Party;

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

financial institution of the other Party: a financial institution, including a branch, incorporated under applicable law, located in the territory of a Party that is controlled by persons of the other Party;

investment:

(a) an enterprise;

(b) shares of an enterprise;

(c) debt instruments of an enterprise:

(i) when the enterprise is an affiliate of the investor; or

(ii) where the original maturity date of the debt instrument is at least three years, but does not include a debt instrument of a state enterprise, regardless of the original maturity date;

(d) a loan to an enterprise:

(i) when the enterprise is a subsidiary of the investor; or

(ii) when the original maturity date of the loan is at least three years, but does not include a loan to a state enterprise, regardless of the original maturity date;

(e) an interest in an enterprise, which allows the owner to participate in the income or profits of the enterprise;

(f) an interest in an enterprise, which entitles the owner to share in the assets of that enterprise in a liquidation, provided that the liquidation does not arise from an obligation or a loan excluded under c) and d);

(g) real estate or other property, tangible or intangible, acquired or used for the purpose of obtaining an economic benefit or for other business purposes;

(h) benefits derived from allocating capital in other resources for the development of an economic activity in the territory of the other Party, among others, pursuant to:

(i) contracts involving the presence of an investor's property in the territory of the other Party, including concessions, construction and turnkey contracts; or;

(ii) contracts involving the presence of an investor's property in the territory of the other Party, including concessions, construction and turnkey contracts; or

(iii) contracts where the remuneration is substantially dependent on the production, revenues or profits of an enterprise; and

(i) a loan provided by or a debt security owned by a cross-border financial services provider, except a loan to or a debt security issued by a financial institution;

investment does not mean:

(j) pecuniary claims that do not involve the types of rights set forth in subparagraphs (a) through (i) arising solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of one Party to an enterprise in the territory of the other Party; or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by the provisions of subparagraph (d);

k) any other pecuniary claim that does not involve the types of fees provided for in subparagraphs a) through i);

l) a loan to a financial institution or a debt security owned by a financial institution, other than a loan to a financial institution that is treated as equity for regulatory purposes by any Party in whose territory the financial institution is located; or

m) a loan to, or a debt security issued by, a Party or a state enterprise of that Party;

investment of an investor of a Party: an investment owned or controlled directly or indirectly by an investor of a Party;

investor of a Party: a Party or an enterprise of the State of that Party, or a person of that Party that intends to make, makes, or has made an investment;

disputing investor: an investor that submits a claim to arbitration under this Chapter and Section B of Chapter XV (Investment);

new financial service: a financial service not provided in the territory of a Party that is provided in the territory of the other Party, including any new form of distribution of a financial service or sale of a financial product that is not sold in the territory of the Party;

self-regulatory body: a non-governmental entity, including a securities or futures exchange or market, clearing house or any

other association or organization that exercises proprietary or delegated regulatory or supervisory authority over financial service suppliers or financial institutions;

person of a Party: a national or company of a Party and, for greater certainty, does not include a branch of a company of a non-Party;

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

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party, by a person of that Party to a person of the other Party; or

(c) by a person of a Party into the territory of the other Party;

financial service supplier of a Party: a person of a Party that is engaged in the business of supplying any financial service in the territory of the other Party;

cross-border financial service supplier of a Party: a person of a Party that is engaged in the business of supplying financial services in its territory and intends to or does engage in the cross-border supply of financial services;

financial service means a service of a financial nature and any related or auxiliary service, including:

(a) all insurance and insurance-related services, including:

(i) direct insurance, including coinsurance;

(ii) life, property, casualty and health insurance;

(iii) reinsurance and retrocession;

(iv) insurance intermediation activities, such as insurance brokers and agents; and

(v) services auxiliary to insurance, such as those provided by consultants and actuaries, risk assessment and claim settlement;

(b) all banking and other financial services, including, but not limited to:

(i) acceptance of deposits and other repayable funds from the public;

(ii) lending of all types, including personal loans, mortgage loans, financial factoring, and financing of commercial transactions;

(iii) financial leasing services;

(iv) all payment and money transfer services, including credit, debit and similar cards, traveler's checks and bankers' drafts;

(v) guarantees and commitments;

(vi) trading for its own account or for the account of customers, whether on an exchange, over-the-counter or otherwise through:

- money market instruments, including checks, bills and certificates of deposit;

- foreign exchange;

- derivative products, including futures and options;

- exchange and money market instruments, such as swaps and forward rate agreements; - transferable securities; or

- other negotiable instruments and financial assets, including metals;

(vii) participation in issues of all kinds of securities, including underwriting and placement as agents and the provision of services related to such issues;

(viii) foreign exchange brokerage;

(ix) asset management including cash or portfolio management, collective investment management in all its forms, pension fund management, depository and custodial trust services;

(x) payment and clearing services in respect of financial assets, including securities, derivatives and other negotiable instruments;

(xi) provision and transfer of financial information and financial data processing and related software by suppliers of other financial services;

(xii) advisory, intermediation and other auxiliary financial services with respect to any of the activities listed in subparagraphs (i) through (xi), including credit reports and analysis, investment and portfolio research and advice, and advice on acquisitions, restructuring and corporate strategy.

Article 12-02. Scope of Application.

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

(a) financial institutions of the other Party;

(b) investors of a Party and investments of those investors in financial institutions in the territory of the other Party; and

(c) cross-border trade in financial services.

2. Nothing in this Chapter shall be construed to prevent a Party, or its public entities, from exclusively conducting or providing in its territory:

(a) activities conducted by monetary authorities or by any other public institution, aimed at the pursuit of monetary or exchange rate policies;

(b) activities and services forming part of public retirement plans or compulsory social security systems; or

(c) other activities or services on behalf of the Party, with its guarantee, or using the financial resources of the Party or its public entities.

3. The Parties undertake to liberalize among themselves, progressively and gradually, any financial restrictions or reservations for the purpose of making effective economic complementation between them.

4. The provisions of this Chapter shall prevail over those of other Chapters, except in cases where express reference is made to those Chapters.

Article 12-03. Self-Regulatory Bodies.

Where a Party requires a financial institution or cross-border financial service provider of the other Party to be a member of, participate in, or have access to a self-regulatory body in order to offer a financial service in or into its territory, the Party shall use its best efforts to ensure that such body complies with the obligations of this Chapter.

Article 12-04. Right of Establishment.

1. The Parties recognize the principle that investors of a Party engaged in the business of supplying financial services in its territory should be permitted to establish a financial institution in the territory of the other Party, through any of the modes of establishment and operation permitted by the other Party.

2. Each Party may impose, at the time of establishment, terms and conditions that are consistent with Article 12-06.

Article 12.-05. Cross-Border Trade.

1. No Party shall increase restrictions on its measures relating to cross-border trade in financial services by cross-border financial service suppliers of the other Party upon the entry into force of this Agreement.

2. Each Party shall permit persons located in its territory and its nationals, wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of that other Party. This does not oblige a Party to allow such suppliers to do business or advertise in its territory. Subject to paragraph 1, each Party may define "doing business" and "advertising" for purposes of this obligation.

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

Article 12-06. National Treatment.

1. In like circumstances, each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, sale, and other forms of disposal of financial institutions and investments in financial institutions in its territory.

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

3. In like circumstances, under Article 12-05, where a Party permits the cross-border supply of a financial service, it shall accord to financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers with respect to the supply of that service.

4. Treatment accorded by a Party to financial institutions and cross-border financial service suppliers of the other Party, whether identical to or different from that accorded to its own institutions or service suppliers in like circumstances, is consistent with paragraphs 1 through 3 if it provides equal opportunity to compete.

5. A Party's treatment does not afford equal opportunity to compete if, in like circumstances, it would disadvantage the financial institutions and cross-border financial service suppliers of the other Party in their ability to supply financial services compared to the ability of the Party's own financial institutions and service suppliers to supply such services.

Article 12-07. Most-Favored-Nation Treatment.

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

Article 12-08. Recognition and Harmonization.

1. In applying the measures covered by this Chapter, each Party may recognize the prudential measures of the other Party or a non-Party. Such recognition may be:

(a) granted unilaterally;

(b) achieved through harmonization or other means; or

(c) based on an agreement with the other Party or a non-Party.

2. The Party granting recognition of prudential measures pursuant to paragraph 1 shall provide appropriate opportunities for the other Party to demonstrate that there are circumstances under which equivalent regulations exist or will exist, supervision and enforcement of the regulation and, if appropriate, procedures for sharing information between the Parties.

3. Where a Party grants recognition of prudential measures pursuant to paragraph 1 and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity for the other Party to negotiate accession to the agreement, or to negotiate a similar agreement.

Article 12-09. Exceptions.

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) protecting investors, depositors, financial market participants, policy holders or beneficiaries, or persons owing fiduciary duties to a financial institution or cross-border financial service provider;

(b) to maintain the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and

(c) ensuring the integrity and stability of a Party's financial system.

2. Nothing in this Chapter applies to non-discriminatory measures of general application adopted by a public entity in the conduct of monetary or related credit or exchange rate policies. This paragraph shall not affect the obligations of any Party arising from investment performance requirements with respect to measures covered by Chapter XV (Investment) or Article 12-17.

3. Article 12-06 shall not apply to the granting of exclusivity rights by a Party to a financial institution to supply a financial service referred to in paragraph 2(a) of Article 12-02.

4. Notwithstanding paragraphs 1 through 3 of Article 12-17, a Party may prevent or limit transfers by, or for the benefit of an affiliate or related person of, a financial institution or cross-border financial service supplier through the fair and non-discriminatory application of measures relating to the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. The provisions of this paragraph shall be without prejudice to any other provision of this Agreement that permits a Party to restrict transfers.

Article 12-10. Transparency.

1. In addition to the provisions of Article 17-02 (Publication), each Party shall ensure that any measure it adopts on matters related to this Chapter is officially published or otherwise made known in a timely manner to the addressees thereof by some other written means.

2. The regulatory authorities of each Party shall make available the requirements for completing an application for the supply of financial services.

3. At the request of the applicant, the regulatory authority shall inform the applicant of the status of its application. Where that authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each regulatory authority shall, within a period not exceeding 180 days, issue an administrative measure with respect to a complete application related to the supply of a financial service, submitted by an investor in a financial institution, by a financial institution or by a cross-border financial service supplier of the other Party. The authority shall promptly notify the person concerned of the measure. The application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. Where it is not practicable to issue a determination within 180 days, the regulatory authority shall notify the interested party without undue delay and thereafter endeavor to issue the determination within a reasonable period of time.

5. Nothing in this Chapter requires a Party to disclose or allow access to:

(a) information relating to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; nor.

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

6. Each Party shall maintain or establish one or more consultation centers, no later than 120 days after entry into force of this Agreement, to respond in writing as soon as possible to all reasonable inquiries from interested persons regarding measures of general application to be adopted by that Party relating to this Chapter.

Article 12-11. Financial Services Working Group.

1. The Parties establish the Financial Services Working Group composed of officials of the competent authorities identified in the Annex to this Article.

2. The Working Group shall:

(a) oversee the implementation of this Chapter and its further development;

(b) consider issues relating to financial services that are submitted to it by a Party; (c) participate in dispute settlement procedures in accordance with Article 12-19; and

(d) facilitate the exchange of information between supervisory authorities and cooperate on prudential regulatory advice, seeking harmonization of regulatory frameworks as well as other policies, where appropriate.

3. The Working Group shall meet at least once a year to evaluate the implementation of this chapter.

Article 12-12. Consultations.

1. Any Party may request consultations with the other Party with respect to any matter related to this Agreement affecting financial services. The other Party shall give favorable consideration to such a request. The consulting Party shall make the results of its consultations known to the Working Group at its meetings.

2. Officials of the competent authorities listed in the Annex to Article 12-11 shall participate in the consultations provided for in this Article.

3. A Party may request that the regulatory authorities of the other Party participate in consultations held pursuant to this Article to discuss measures of general application of that other Party that may affect the operations of financial institutions or cross-border financial service providers in the territory of the Party requesting the consultation.

4. Nothing in this Article shall be construed to require regulatory authorities involved in consultations under paragraph 3 to disclose information or to act in a manner that would interfere with particular regulatory, supervisory, administrative or enforcement matters.

5. Where, for supervisory purposes, a Party needs information on a financial institution in the territory of the other Party or on cross-border financial service suppliers in the territory of the other Party, the Party may approach the responsible regulatory authority in the territory of that other Party to request the information.

Article 12-13. New Financial Services and Data Processing.

1. Each Party shall permit, in like circumstances, a financial institution of the other Party to provide any new financial services of a type similar to those that that Party permits its financial institutions to provide under its law. The Party may decide the institutional and legal modality through which such service is offered and may require authorization for the provision of such service. When such authorization is required, the respective resolution shall be issued within a reasonable period of time and may only be denied for prudential reasons.

2. Each Party shall permit financial institutions of the other Party to transfer, for processing, information into or out of the territory of the Party, using any of the means authorized therein, when necessary to carry out the ordinary business activities of those institutions.

Article 12-14. Senior Management and Boards of Directors.

1. No Party may require financial institutions of the other Party to employ personnel of a particular nationality for senior corporate management or other key positions.

2. No Party may require that the board of directors of a financial institution of the other Party be composed of more than a simple majority of nationals of that Party, residents of its territory, or a combination of both.

Article 12-15. Reservations and Specific Commitments.

1. Articles 12-04, to 12-07, 12-13 and 12-14 do not apply to:

(a) any non-conforming measure that each Party includes in the Annex to this Article within one year of the entry into force of this Agreement;

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

(c) any modification to a non-conforming measure referred to in subparagraph (a), so long as that modification does not reduce the measure's degree of conformity with Articles 12-04, 12-07, 12-13 and 12- 14 as in effect immediately prior to the modification.

2. Where a Party has entered in Part Three (Trade in Services) and Part Six (Investment) a reservation relating to the right of establishment, cross-border trade in services, national treatment, most-favored-nation treatment, new financial services and data processing, and senior management and boards of directors, the reservation shall be deemed to be made to Articles 12-04, 12-07, 12-13 and 12-14, as the case may be, to the extent that the measure, sector, subsector or activity specified in the reservation is covered by this Chapter.

Article 12-16. Denial of Benefits.

A Party may deny, in whole or in part, benefits under this Chapter to a financial service supplier of the other Party or a cross-border financial service supplier of the other Party, after notification and consultations in accordance with Articles 12-10 and 12-12, where the Party determines that the service is being supplied by an enterprise that does not carry on substantial business activities in the territory of any Party or is owned or controlled by persons of a non-Party.

Article 12-17. Transfers.

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

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other charges, profits in kind and other amounts derived from the investment;

(b) proceeds from the sale or liquidation, in whole or in part, of the investment;

(c) payments made pursuant to a contract to which an investor or its investment is a party;

(d) payments made pursuant to Article 15-09; and

(e) payments resulting from a dispute settlement proceeding between a Party and an investor of the other Party under this Chapter and Section B of Chapter XV (Investment).

2. Each Party shall permit transfers to be made in freely convertible currency at the market rate of exchange prevailing on the date of transfer for spot transactions in the currency to be transferred, subject to Article 12- 18.

3. No Party may require its investors to make transfers of their income, earnings, or profits or other amounts derived from or attributable to investments made in the territory of the other Party.

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

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

(b) issuance, trading, and operations of securities;

(c) criminal or administrative offenses;

(d) reports of transfers of currency or other monetary instruments; or

(e) security for the enforcement of judgments or awards in an adversary proceeding.

5. Paragraph 3 shall not be construed to prevent a Party, through the application of its law in an equitable, non-discriminatory and good faith manner, from imposing any measure related to subparagraphs (a) and (e) of paragraph 4.

Article 12-18. Balance of Payments and Safeguard.

1. Each Party may adopt or maintain a measure to suspend, for a reasonable period of time, all or only some of the benefits contained in this Chapter and Article 15-08 (Transfers), when:

(a) the application of any provision of this Chapter or Article 15-08 (Transfers) would result in a serious economic and financial disruption in the territory of the Party that cannot be adequately addressed by any alternative measure; or

(b) the balance of payments of a Party, including the state of its monetary reserves, is seriously threatened or faces serious difficulties.

2. A Party that suspends or intends to suspend the benefits of this Chapter shall notify the other Party as soon as possible:

(a) what the serious economic and financial disruption caused by the application of this Chapter or Article 15-08 (Transfers), as appropriate, consists of, the nature and extent of the difficulties threatening or facing its balance of payments;

(b) the economic and foreign trade situation of the Party;

(c) the alternative measures available to it to correct the problem; and

(d) the economic policies it adopts to deal with the problems referred to in paragraph 1, as well as the direct relationship between those policies and the solution thereof.

3. The measure adopted or maintained by the Party shall, at all times:

(a) shall avoid unnecessary damage to the economic, commercial and financial interests of the other Party;

(b) shall not impose greater burdens than those necessary to address the difficulties giving rise to the adoption or maintenance of the measure;

(c) shall be temporary, liberalizing progressively as the balance of payments, or the economic and financial situation of the Party, as the case may be, improves;

(d) shall be applied in such a way as to avoid discrimination between the Parties at all times; and

(e) shall seek to be consistent with internationally accepted standards.

4. Any Party that adopts a measure to suspend benefits contained in this Chapter or in Article 15-08 (Transfers) shall inform the other Party of the evolution of the events that gave rise to the adoption of the measure.

5. For purposes of this Article, reasonable time means the time during which the events described in paragraph 1 persist.

Article 12-19. Settlement of Disputes between the Parties.

1. As amended by this Article, Chapter XIX (Dispute Settlement) applies to the settlement of disputes arising between the Parties with respect to this Chapter.

2. The Financial Services Working Group shall establish by consensus a roster of up to ten individuals, including up to five individuals from each Party, who have the necessary skills and qualifications to act as arbitrators in disputes relating to this Chapter. The members of this roster shall, in addition to meeting the requirements set forth in Chapter XIX (Dispute Settlement), have specialized knowledge in financial matters, extensive experience derived from the exercise of responsibilities in the financial sector or in its regulation.

3. For the purposes of the constitution of the arbitral tribunal, the list referred to in paragraph 2 shall be used, except that the disputing Parties may agree that individuals not included in that list may form part of the arbitral tribunal, provided that they meet the requirements set forth in paragraph 2.

4. In any dispute in which the arbitral tribunal has found a measure to be inconsistent with the obligations of this Chapter where the suspension of benefits referred to in Chapter XIX (Dispute Settlement) is appropriate and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in that sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of that measure on the financial services sector; or

(c) any sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12-20. Financial Services Investment Dispute.

1. Section B of Chapter XV (Investment) is incorporated into and made an integral part of this Chapter.

2. Where an investor of the other Party, pursuant to Article 15-19 (Claim by Investor of a Party on its own account or on behalf of an enterprise) and under Section B of Chapter XV (Investment) submits a dispute against a Party to arbitration, and that respondent Party invokes Article 12-09 at its own request, the tribunal shall refer the matter in writing to the Working Group for decision. The tribunal may not proceed until it has received a decision or report under the terms of this Article.

3. In referring the matter under paragraph 1, the Working Group shall decide whether and to what extent Article 12-09 is a valid defense to the investor's claim. The Working Group shall transmit a copy of its decision to the arbitral tribunal and to the Commission. That decision shall be binding on the tribunal.

4. Where the Working Group has not reached a decision within 60 days of receiving the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request that an arbitral panel be established in accordance with Article 15-26 (Consent to the Appointment of Arbitrators). The panel shall be constituted in accordance with Article 12-19 and shall send to the Working Group and the arbitral tribunal its final determination, which shall be binding on the tribunal.

5. Where no request for the establishment of a panel under paragraph 3 has been made within ten days after the expiration

of the 60-day period referred to in that paragraph, the tribunal may proceed to decide the case.

Annex to Article 12-11. Competent Authorities

1. The Financial Services Working Group shall be composed of such officials as it may designate:

(a) for the case of Bolivia, the Superintendencia de Bancos e Instituciones Financieras, on a transitory basis, as long as Bolivia does not notify a different authority; and

(b) in the case of Mexico, the Ministry of Finance and Public Credit.

2. The principal representative of each Party shall be the one designated by such authority for such purpose.

Chapter XIII. Standardization Measures

Article 13-01. Definitions.

1. For the purposes of this chapter, the terms presented in the sixth edition of ISO/IEC 2: 1991, "General terms and their definitions in relation to standardization and related activities", shall have the same meaning when used in this chapter, unless they are defined differently here.

2. For the purposes of this chapter, the following definitions shall apply:

hazardous waste: any material generated in the processes of extraction, benefit, transformation, production, consumption, use, control or treatment, whose quality does not allow it to be used again in the process that generated it and which, due to its corrosive, toxic, poisonous, reactive, explosive, flammable, infectious biological, infectious or irritating characteristics, represents a danger to health or the environment;

risk assessment: the evaluation of the potential harm to human, animal or plant health or safety, or the environment that could be caused by any good or service traded between the Parties;

to make compatible: to bring to the same level different standardization measures, but with the same scope, approved by different standardization bodies, so that they are identical, equivalent or have the effect of allowing goods and services to be used interchangeably or for the same purpose, so as to allow goods and services to be traded between the Parties;

standardization measures: standards, technical regulations or conformity assessment procedures;

standard: a document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for related goods or processes and production methods, or for related services or methods of operation, and compliance with which is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements applicable to a related good, service, process or related production or operating method;

international standard: a standardization measure, or other rule or recommendation, adopted by an international standardizing body and made available to the public;

legitimate objectives: inter alia, the assurance of safety or the protection of human, animal, plant or

environmental life or health, or the prevention of practices that may mislead consumers, including matters relating to the identification of goods or services, considering among other things, where appropriate, fundamental climatic, geographical, technological, infrastructural or scientific justification factors;

standardizing body: a body whose standardization activities are recognized;

international standardizing body: a standardizing body open to participation by the relevant bodies of at least all parties to the GATT TBT Agreement, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission, the World Health Organization (WHO) and its subsidiary bodies, or any other body designated by the Parties;

approval procedure: the registration, notification or any other mandatory administrative process for obtaining a permit for a good or service to be placed on the market or used for defined purposes or under defined conditions;

conformity assessment procedure: any procedure used, directly or indirectly, to determine whether the relevant requirements established by technical regulations or standards are met, including sampling, testing, inspection, evaluation, assessment, verification, assurance of conformity, accreditation, certification, registration or approval, used for those

purposes, but does not mean an approval procedure;

administrative denial: actions taken by an organ of the public administration of the importing Party, in the exercise of its powers, to prevent the entry into its territory of a shipment or the provision of a service, for technical reasons;

technical regulation: a document that establishes the characteristics of goods or their related processes and methods of production, or the characteristics of services or their related methods of operation, including the applicable administrative provisions, and whose observance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging or labeling requirements applicable to a good, service, process or related production or operation method;

service: any service within the scope of this Agreement, except financial services;

hazardous substances: those that threaten human, animal, plant or environmental health or integrity, and that are identified as such by national and international organizations.

Article 13-02. Scope of Application.

1. This Chapter applies to the standardization and metrology measures of the Parties, as well as measures related thereto, that may affect, directly or indirectly, trade in goods or services between the Parties.

2. This Chapter does not apply to the animal and plant health measures referred to in Section B of Chapter IV (Agricultural Sector and Animal and Plant Health Measures).

Article 13-03. Extension of Obligations.

Each Party shall comply with the provisions of this Chapter and shall take the necessary measures to ensure compliance by state, departmental and local governments, and shall take such measures in that regard as may be available to it, with respect to non-governmental standardizing bodies in its territory.

Article 13-04. Confirmation of International Rights and Obligations.

The Parties confirm their existing rights and obligations regarding standardization measures under the GATT and other international treaties to which the Parties are parties, including treaties on health, environment and conservation.

Article 13-05. Basic Obligations and Rights.

1. Notwithstanding any other provision of this Chapter, and in accordance with paragraph 3 of Article 13-07, each Party may establish such level of protection as it considers appropriate to achieve its legitimate objectives.

2. Each Party may develop, adopt, implement and maintain standardization measures to ensure its level of protection of human, animal or plant life or health, the environment or for the prevention of practices that may mislead the consumer, as well as measures to ensure the implementation and enforcement of such standardization measures, including relevant approval procedures.

3. No Party shall develop, adopt, maintain or apply any standardizing measure that has the purpose or effect of creating unnecessary obstacles to trade between them. To this end, each Party shall ensure that standardizing measures are no more trade-restrictive than necessary for the achievement of its legitimate objectives, taking into account technical and economic possibilities and the risks that non-compliance would create.

4. With respect to its standards-related measures, each Party shall accord to goods and service suppliers of the other Party national treatment and treatment no less favorable than that it accords to like goods and service suppliers of any other country.

Article 13-06. Use of International Standards.

1. Each Party shall use, as a basis for the development, elaboration or application of its standards, existing or imminently adopted international standards, except where such international standards are not an effective or appropriate means of achieving its legitimate objectives, due to fundamental factors of a climatic, geographical, technological or infrastructural nature, among others.

2. A Party's standardization measure that conforms to an international standard shall be presumed to be consistent with

paragraphs 3 and 4 of article 13-05.

3. In pursuing its legitimate objectives, each Party may adopt, maintain or apply any standards-related measure that results in a higher level of protection than would have been achieved if the measure were based on an international standard due to, inter alia, fundamental climatic, geographical, technological or infrastructural factors.

Article 13-07. Risk Assessment.

1. Each Party may conduct risk assessments in its territory provided that this does not have the purpose or effect of creating unnecessary obstacles to trade between them. In doing so, it shall take into consideration risk assessment methods developed by international organizations and shall ensure that its standardization measures are based on assessments of risk to human, animal, plant and environmental health and safety.

2. In conducting a risk assessment, the Party conducting the risk assessment shall take into consideration any relevant scientific evidence, available technical information, intended end use, processes or methods of production, operation, inspection, quality, sampling or testing, or environmental conditions.

3. Having established the level of protection it considers appropriate in accordance with paragraph 1 of Article 13-05, each Party shall, in carrying out a risk assessment, avoid arbitrary or unjustifiable distinctions between similar goods and services, if such distinctions:

(a) have the effect of arbitrarily or unjustifiably discriminating against goods or service suppliers of the other Party;

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

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

4. Where the Party conducting a risk assessment concludes that the scientific evidence or other available information is insufficient to complete the assessment, it may adopt a technical regulation on a provisional basis based on the relevant available information. Once it has been presented with sufficient information to complete the risk evaluation, the Party shall complete its evaluation as soon as possible, and shall review and, where appropriate, reconsider the provisional technical regulation in the light of that evaluation.

Article 13-08. Compatibility and Equivalence.

1. The Parties recognize the central role that standardization measures play in the promotion and protection of legitimate objectives and shall work together to strengthen the level of safety and protection of human, animal and plant life and health, the environment, and the prevention of practices that may mislead consumers.

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

3. At the request of a Party, the other Party shall take such reasonable measures as are within its power to promote the compatibility of its specific standardization measures with the standardization measures of the other Party, taking into account international procedures and activities in this field.

4. Each Party shall accept a technical regulation adopted by the other Party as equivalent to its own when, in cooperation with the other Party, the exporting Party demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfills the legitimate objectives of the importing Party.

5. On request of the exporting Party, the importing Party shall communicate in writing to the exporting Party its reasons for not having accepted a technical regulation under paragraph 4.

6. To the extent possible, each Party shall accept the results of conformity assessment procedures carried out in the territory of the other Party, even if those procedures differ from its own, provided that they offer satisfactory assurance, equivalent to that offered by procedures carried out or to be carried out in its territory, the result of which it accepts, that the relevant good or service complies with the applicable technical regulations or standards that are developed or maintained in the territory of that Party.

7. Prior to acceptance of the results of a conformity assessment procedure in accordance with paragraph 6, in order to strengthen confidence in the continued integrity of each Party's conformity assessment results, the Parties may consult on

matters such as the technical capability of conformity assessment bodies, taking into consideration verified compliance with relevant international standards through that means of accreditation.

Article 13-09. Conformity Assessment.

1. Recognizing the existence of differences in conformity assessment procedures in their respective territories, the Parties shall, to the greatest extent possible, make compatible their respective conformity assessment procedures in accordance with the provisions of this Chapter.

2. If mutually beneficial, each Party shall, on a reciprocal basis, accredit, approve, license or recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those granted to such bodies in its territory.

3. With respect to its conformity assessment procedures, each Party shall be obliged to:

(a) not to adopt or maintain more stringent conformity assessment procedures, or to apply them more strictly than necessary, to satisfy itself that the good or service conforms to the applicable technical regulations or standards, taking into consideration the risks that non-conformity might create;

(b) initiate and complete this procedure as expeditiously as possible;

(c) establish a non-discriminatory order for the processing of requests;

(d) to accord to goods and services originating in the other Party national treatment and treatment no less favorable than that it accords to its like goods and services or to goods or services of any other country;

(e) publish the normal duration of each of these procedures or communicate, at the request of the applicant, the approximate duration of the procedure;

(f) ensure that the competent national body:

(i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant, accurately and completely, of any deficiencies;

(ii) as soon as possible, transmits to the applicant the results of the conformity assessment procedure in an accurate and complete manner, so that the applicant can carry out any corrective action;

(iii) where the application is deficient, continue the procedure as far as possible, if the applicant so requests; and

(iv) inform the requester, upon request, of the status of the request and the reasons for any delay;

(g) limit the information to be submitted by the applicant to that necessary to assess conformity and to determine the appropriate cost of the assessment;

(h) to grant confidential information arising out of or submitted in connection with the procedure with respect to a good or service of the other Party:

(i) the same treatment as that accorded to information relating to a good or service of the Party; and (ii) treatment that protects the commercial interests of the applicant;

(j) ensure that any fee charged for assessing conformity of a good or service being exported from the other Party is equitable in relation to that charged for assessing conformity of an identical or similar good or service of the Party, taking into account communication, transportation and related costs;

(k) ensure that the location of the facilities where the conformity assessment procedures are carried out does not cause unnecessary inconvenience to the applicant or its representative;

(l) when possible, to try to assure that the procedure is carried out in the production facility of the good and that a conformity mark is granted, when appropriate;

(m) limit the procedure, in the case of a good or service that has been modified subsequent to a conformity assessment determination, to what is necessary to determine that the good or service continues to comply with those regulations or standards; and

(n) limit to reasonableness any requirement for samples of a good and ensure that the selection and collection of samples

does not cause unnecessary inconvenience to the applicant or its representative.

4. The Parties shall apply the provisions of paragraph 3, with appropriate modifications, to their approval procedures.

5. Each Party shall give favorable consideration to the request of the other Party to negotiate agreements on the mutual recognition of the results of that Party's conformity assessment procedures.

Article 13-10. Metrological Standards.

The Parties shall make compatible, to the greatest extent possible, their metrological standards, taking as a basis the international standards in force, as stipulated in this Chapter.

Article 13-11. Health Protection.

1. Each Party shall ensure that the:

(a) medicines, medical equipment and instruments, pharmochemical goods and other inputs for human, animal or plant health;

(b) foodstuffs;

(c) cosmetics and perfumes;

(d) dangerous goods and substances; and

(e) goods, materials, radioactive sources and equipment, and sources and equipment emitting ionizing radiation,

which are subject to sanitary registration within the territory of a Party, shall, where appropriate, be registered, recognized or evaluated by the competent authority of that country, on the basis of a single national system of a federal or central character, as the case may be, of mandatory observance.

2. Certificates attesting that the enterprises producing or conditioning the goods referred to in paragraph 1 comply with the standards and technical regulations shall be accepted only if they have been issued by the competent regulatory agencies of the federal or central government, as the case may be.

3. The Parties shall establish a system of mutual technical cooperation that shall work on the basis of the following program:

(a) identification of specific needs relating to:

(i) to the application of good manufacturing practices in the manufacture and approval of medicines, particularly those for human use;

(ii) the application of good laboratory practices in the systems of analysis and evaluation established in the relevant international guidelines in force; and

(iii) the development of common identification and nomenclature systems for health auxiliary goods and medical instruments;

(b) standardization of labeling requirements, development and strengthening of, inter alia, standardization and surveillance systems in relation to warning labeling;

(c) development of training and education programs, and organization of, inter alia, a common system for the training, continuing education, training and evaluation of health officials and inspectors;

(d) development of a mutual accreditation system for verification units and testing laboratories;

(e) development and strengthening of formal communication systems to monitor and regulate the exchange of goods related to human, animal or plant health; and

(f) development, strengthening and promotion of cooperation in matters related to paragraphs 1 and 2.

4. The Sub-Working Group on Health Standardization Measures, established pursuant to Article 13-17, shall organize and follow up on the activities referred to in paragraph 3 and shall make appropriate recommendations to the Parties upon request.

Article 13-12. Protection of the Environment and Management of Hazardous Substances and Wastes.

1. For the care and protection of its environment, each Party shall apply the provisions, guidelines or recommendations of the United Nations Organization and of the relevant international agreements to which both Parties are parties, in addition to its legislation.

2. The Parties shall regulate and control the production, introduction and commercialization of pharmaceutical products, toxic agro-chemicals and other hazardous substances, in accordance with the provisions of this Treaty and those of their legislation.

3. Each Party shall regulate, in accordance with its legislation, the introduction, acceptance, deposit, transport and transit through its territory of hazardous, radioactive or other wastes of internal or external origin which, by their characteristics, constitute a danger to the health of the population or to the environment.

Article 13-13. Labeling.

1. In accordance with the provisions of this Chapter, each Party shall apply, within its territory, its relevant labeling requirements.

2. The Parties shall develop common labeling requirements through the Sub-Working Group on Standardization Measures on Labeling, Packaging, Packaging and Consumer Information established pursuant to paragraph 5 of Article 13-17.

3. The Sub-Working Subgroup shall formulate recommendations, among others, on the following matters:

(a) development of a common system of symbols and pictograms;

(b) definitions and terminology;

(c) presentation of information, including language, measurement systems, ingredients and sizes; and

(d) any other related matters.

Article 13-14. Notification, Publication and Provision of Information.

1. Each Party shall notify the other Party of the standardization and metrology measures it intends to establish before they enter into force and no later than to its nationals.

2. In addition to the provisions of Articles 17-02 (Publication) and 17-03 (Notification), to propose the adoption or modification of any standardization or metrology measure, each Party shall:

(a) shall publish a notice and notify the other Party in writing of its intention to adopt or modify such measure, so as to enable interested persons to familiarize themselves with the proposal, at least 60 days in advance of its adoption or modification, except in the case of any standardization measure relating to perishable goods, in which case, the Party shall, to the greatest extent possible, publish the notice and notify at least 30 days in advance of the adoption or modification of such measures and, in any case, simultaneously that its producers;

(b) identify in such notice and notification the good or service to which the measure is to be applied, and include a brief description of the objective and motivation of the measure;

(c) provide a copy of the proposed measure to the other Party or any interested person upon request and, where possible, identify the provisions that deviate in substance from the relevant international standards;

(d) without discrimination, allow the other Party and interested persons to make comments in writing and, upon request, discuss and take them and the results of the discussions into account; and

(e) ensure that, upon adoption of the measure, it is published expeditiously or otherwise made available to interested persons in the other Party to familiarize them with it.

3. Each Party shall endeavor to avoid maintaining in force or applying any technical regulations and conformity assessment procedures if the circumstances or objectives that gave rise to their adoption no longer exist, or can be met in a manner less restrictive to bilateral trade.

4. With respect to technical regulations other than those issued by the federal or central government, as the case may be, each Party shall:

(a) shall ensure that a notice is published and shall notify the other Party in writing of its intention to adopt or modify such a regulation at an appropriate initial stage;

(b) ensure that such notice and notification identifies the good or service to which the technical regulation will apply, and includes a brief description of the objective and rationale for the technical regulation;

(c) ensure that a copy of the proposed technical regulation is provided to the other Party or any interested person on request; and

(d) take such reasonable measures as may be available to it to ensure that when the technical regulation is adopted, it is published expeditiously or otherwise made available to interested persons in the other Party so that they may become familiar with it.

5. Where a Party considers it necessary to address an urgent problem relating to safety or to the protection of human, animal or plant life or health, the environment or to practices that mislead consumers, it may omit any of the steps set out in paragraph 2 or 4, provided that, when adopting the standardization measure:

(a) immediately notifies the other Party in accordance with the requirements set out in paragraph 2(b), including a brief description of the urgent problem;

(b) provides a copy of the measure to the other Party and to any interested person upon request;

(c) without discrimination, allow the other Party and interested persons to make comments in writing and, upon request, discuss and take them, and the results of the discussions, into account; and

(d) ensures that the measure is published expeditiously, or otherwise enables interested persons to become familiar with it.

6. The Parties shall allow a reasonable period between the publication of their standardization measures and the date on which they enter into force for interested persons to adapt to these measures, except where it is necessary to address one of the urgent problems identified in paragraph 5.

7. Each Party shall annually notify the other Party in writing of its standardization plans and programs.

8. Where a Party permits interested persons from outside the government to be present during the process of developing standardization measures, it shall also permit persons from outside the government of the other Party to be present.

9. Each Party shall designate a government authority to be responsible for the implementation of the notification provisions of this Chapter and shall notify the other Party. Where a Party designates two or more governmental authorities for this purpose, it shall inform the other Party precisely and fully of the scope of responsibilities of those authorities.

10. When a Party administratively rejects a shipment or provision of services on the grounds of non- compliance with a standardization measure, it shall inform, without delay and in writing, the person holding the shipment or the service provider of the technical justification for the rejection.

11. Once the information referred to in paragraph 10 has been generated, the Party shall immediately forward it to the information center or centers, in its territory, referred to in Article 13-15 in its territory, which, in turn, shall bring it to the attention of the information centers of the other Party.

Article 13-15. Information Centers.

1. Each Party shall ensure that there is at least one information center in its territory capable of responding to all reasonable inquiries and requests from the other Party and interested persons, as well as providing relevant documentation regarding:

(a) any standardization measures or metrological standards adopted or proposed in its territory;

(b) the membership and participation of that Party, or its relevant authorities, in international or regional standardizing bodies and conformity assessment systems, in bilateral or multilateral agreements, within the scope of this Chapter, as well as in relation to the provisions of those systems and agreements;

(c) the location of notices published in accordance with this chapter, or the place where the information contained therein may be obtained;

(d) the location of the information centers referred to in paragraph 3; and

(e) the Party's risk assessment procedures, the factors it takes into consideration in carrying out the assessment, and with the establishment of the levels of protection it considers appropriate, in accordance with paragraph 1 of Article 13-05.

2. Where a Party designates more than one information center:

(a) inform the other Party of the scope of responsibilities of each such center; and

(b) ensure that any request sent to the wrong enquiry point is expeditiously forwarded to the correct enquiry point.

3. Each Party shall take such reasonable measures as may be available to it to ensure that there is at least one information center, within its territory, capable of responding to all inquiries and requests from the other Party and interested persons, and of providing relevant documentation, or information where such documentation may be obtained, relating to:

(a) any standards or conformity assessment processes adopted or proposed by non-governmental standardizing bodies in its territory; and

(b) the membership and participation in international and regional standardizing bodies and conformity assessment systems of relevant non-governmental bodies in its territory.

4. Each Party shall ensure that, where the other Party or interested persons, in accordance with the provisions of this Chapter, request copies of the documents referred to in paragraph 1, they shall be provided at the same price that applies for domestic sale, except for the actual cost of shipment.

Article 13-16. Limitations on the Provision of Information.

Nothing in this Chapter shall be construed to impose an obligation on a Party to provide any information, the disclosure of which it considers contrary to the essential interests of its national security or of particular enterprises.

Article 13-17. Working Group on Standardization Measures.

1. The Parties establish the Working Group on Standardization Measures, composed of an equal number of representatives of each Party.

2. The functions of the Working Group include, among others:

(a) monitoring the implementation, compliance and administration of this Chapter, including the progress of the sub-working groups established pursuant to paragraph 5;

(b) facilitating the process through which the Parties will make their standardization and metrology measures compatible;

(c) to serve as a forum for the Parties to consult on matters related to standardization and metrology measures;

(d) promote technical cooperation activities between the Parties;

(e) assist in risk assessments carried out by the Parties;

(f) assist in developing and strengthening the standardization and evaluation systems of the Parties; and

(g) report annually to the Commission on the implementation of this Chapter.

3. The Working Group shall:

(a) shall meet at least once a year, unless otherwise agreed by the Parties;

(b) establish its rules of procedure; and

(c) make its decisions by consensus.

4. When the Working Group considers it appropriate, it may establish such sub-working groups as it deems appropriate and shall determine the scope and terms of reference of such sub-working groups. Each such sub-working group shall be composed of representatives of each Party and may:

(a) when it deems necessary, include or consult with:

(i) representatives of non-governmental bodies, such as standardization and metrology bodies or private sector chambers and associations;

(ii) scientists; and

(iii) technical experts; and

(b) determine its work program, taking into account relevant international activities.

5. In addition to the provisions of paragraph 4, the Working Group shall:

(a) establish:

(i) the Sub-Working Group on Health Standardization Measures;

(ii) the Sub-Working Group on Standardization Measures on Labeling, Packaging, Packaging and Consumer Information; and

(iii) the Sub-Working Group on Telecommunications; and

(b) any other working subgroups it deems appropriate to analyze, inter alia, the following topics:

(i) the identification and nomenclature of goods and services subject to standardization measures;

(ii) technical regulations and standards of quality and identity;

(iii) programs for the approval of goods and for post-sale surveillance;

(iv) principles for the accreditation and recognition of testing facilities, inspection agencies and conformity assessment bodies;

(v) the development and implementation of a uniform system for the classification and reporting of hazardous chemicals and the communication of chemical hazards;

(vi) programs to ensure compliance with the provisions in force, including training and inspection by personnel responsible for regulation, analysis and verification of compliance;

(vii) the promotion and application of good laboratory practices; viii) the promotion and application of good laboratory practices; viii) the promotion and application of good laboratory practices;

(viii) the promotion and application of good manufacturing practices; viii) the promotion and application of good manufacturing practices; viii) the promotion and application of good manufacturing practices;

(ix) criteria for the evaluation of potential damage to the environment due to the use of goods or services; x) analysis of procedures for the evaluation of potential damage to the environment due to the use of goods or services;

(x) analysis of procedures for the simplification of import requirements for specific goods;

(xi) guidelines for testing chemical substances, including industrial, agricultural, pharmaceutical, and biological substances; and

(xii) means of facilitating consumer protection, including consumer redress.

Article 13-18. Technical Cooperation.

1. At the request of a Party, the other Party may provide information or technical assistance, to the extent of its capabilities and on mutually agreed terms, in order to assist compliance with this Chapter and to strengthen the standardization and metrology activities, processes, systems and measures of that Party.

2. The activities referred to in paragraph 1 include:

(a) the identification of specific needs;

(b) training and capacity building programs;

(c) the development of a mutual accreditation system for verification units and testing laboratories;

(d) the development and strengthening of formal communication systems to monitor and regulate the exchange of goods

and services; and

(e) information on technical cooperation programs related to standardization measures carried out by a Party.

3. In order to carry out the activities proposed in paragraph 2, the Parties shall establish the necessary mechanisms they deem appropriate, including those referred to in paragraph 4 of Article 13-17.

Article 13-19. Technical Consultations.

1. When a Party has doubts about the interpretation or application of this Chapter, about the standardization or metrology measures of the other Party or about measures related to them, the latter may refer to the Working Group or resort to the dispute settlement mechanism provided for in Chapter XIX (Dispute Settlement). The Parties may not use both avenues simultaneously.

2. When a Party decides to resort to the Working Group, it shall notify the Working Group so that it may consider the matter or refer it to a subworking group or other competent forum, with a view to obtaining non- binding technical advice or recommendations.

3. The Working Group shall consider any matter referred to it pursuant to paragraphs 1 and 2 as expeditiously as possible and shall bring to the attention of the Parties any technical advice or recommendations it develops or receives in connection with that matter. Upon receipt by the Parties of the requested technical advice or recommendation from the Working Group, the Parties shall provide a written response to the Working Group with respect to such technical advice or recommendation within a period to be determined by the Working Group.

4. In the event that the technical recommendation issued by the Working Group does not resolve the dispute between the Parties, the Parties may resort to the dispute settlement mechanism established in Chapter XIX. If the Parties so agree, consultations held before the Working Group shall constitute consultations for purposes of Article 19-04 (Consultations).

5. A Party asserting that a standards-related measure of the other Party is inconsistent with the provisions of this Chapter shall prove the inconsistency.

Chapter XIV. Government Procurement

Section A. Definitions

Article 14-01. Definitions

For purposes of this Chapter, the following definitions shall apply:

goods of the other Party: goods originating in the territory of the other Party, in accordance with Article 14- 05;

construction services contract: a contract for the performance, by whatever means, of civil works or construction referred to in the Appendix to Annex 6 to Article 14-02;

entity: an entity included in annexes 1 to 3 to article 14-02;

technical specification: a specification that establishes the characteristics of goods or processes and related production methods, or the characteristics of services or their related methods of operation, including the applicable administrative provisions. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements applicable to a good, process or method of production or operation;

bidding procedures: open, selective and restricted bidding procedures; open tendering procedures: those in which all interested suppliers may submit bids;

restricted tendering procedures: those in which an entity communicates individually with suppliers only in the circumstances and in accordance with the conditions described in Article 14-16;

selective tendering procedures: those in which, under the terms of paragraph 3 of Article 14-12, suppliers

invited by the entity may submit tenders;

supplier: a person who has supplied or may supply goods or services in response to an entity's invitation to tender;

locally established supplier: a natural person resident in the territory of the Party, a company of the Party, and a branch or

representative office located in the territory of the Party, among others;

services: contracts for services and construction services, unless otherwise specified.

Section B. Scope of Application and Coverage. National Treatment

Article 14-02. Scope of Application.

1. This Chapter applies to measures that a Party adopts or maintains with respect to purchases:

(a) of a federal or central government entity, as the case may be, identified in Annex 1 to this Article; a government enterprise identified in Annex 2 to this Article; or a state government entity or departmental entity identified in Annex 3 to this Article in accordance with Article 14-24;

(b) of goods, in accordance with Annex 4 to this Article; of services, in accordance with Annex 5 to this Article; or of construction services, in accordance with Annex 6 to this Article; and

(c) when the value of the procurement to be awarded is estimated to equal or exceed the value of the following thresholds, calculated and adjusted in accordance with the inflationary rate of the United States of America as set forth in Annex 7 to this Article, in the case of:

(i) federal or central government entities, of US$50,000 for contracts for goods, services or any combination thereof, and US$6.5 million for contracts for construction services;

(ii) government enterprises, US$250,000 for contracts for goods, services or any combination thereof, and US$8 million for contracts for construction services; and

(iii) State government entities and departmental entities, the value of the applicable thresholds, as set forth in Annex 3 to this Article, in accordance with Article 14-24.

2. Paragraph 1 shall be subject to the transition mechanisms set forth in Annex 8 to this Article and the general notes set forth in Annex 9 to this Article.

3. Subject to paragraph 4, where the procurement that an entity is to procure is not covered by this Chapter, the provisions of this Chapter shall not be construed to cover the components of any goods or services that are the subject of that procurement.

4. No Party shall design, develop or structure a procurement contract in such a manner as to avoid the obligations of this Chapter.

5. Purchases includes acquisitions by methods such as purchase, lease, with or without an option to purchase, but does not include:

(a) non-contractual agreements or any form of government assistance, including cooperative agreements, transfers, loans, capital transfers, guarantees, tax incentives, and government procurement of goods and services provided to individuals or to state governments, departmental and regional entities; nor.

(b) the acquisition of agency services or fiscal deposits, liquidation and administration services for regulated financial institutions, and sale and distribution services of public debt.

Article 14-03. Valuation of Contracts.

1. Each Party shall ensure that, in determining whether a contract is covered by this Chapter, its entities apply the provisions of paragraphs 2 through 7 to calculate the value of that contract.

2. The value of the contract shall be the value estimated at the time of publication of the solicitation in accordance with Article 14-11.

3. In calculating the value of a contract, entities shall take into account all forms of remuneration, including premiums, fees, commissions and interest.

4. In addition to the provisions of paragraph 4 of Article 14-02, an entity may not choose a valuation method or split the purchase requirements into separate contracts for the purpose of evading the obligations contained in this Chapter.

5. Where an individual requirement results in the award of more than one contract or the contracts are awarded in separate parts, the basis for valuation shall be:

(a) the actual value of similar recurring contracts entered into during the preceding fiscal year or the preceding 12 months, adjusted, where possible, for changes in quantity and value anticipated for the following 12 months; or

(b) the estimated value of recurring contracts entered into during the fiscal year or in the 12 months following the initial contract.

6. In the case of lease contracts, with or without an option to purchase, or contracts in which a total price is not specified, the basis for valuation shall be:

(a) in the case of contracts entered into for a specified term, if the term is 12 months or less, the calculation shall be made on the basis of the total value of the contract during its term or, if greater than 12 months, on the basis of the total value including the estimated residual value; or

b) in the case of open-ended contracts, the basis shall be the estimated monthly payment multiplied by 48.

7. If the entity is uncertain whether a contract is for a definite or indefinite term, the entity shall calculate the value of the contract using the method in paragraph 6(b).

8. Where the bidding documents require optional clauses, the basis for valuation shall be the total value of the maximum allowable purchase, including all possible optional purchases.

Article 14-04. National Treatment and Non-Discrimination.

1. With respect to measures covered by this Chapter, each Party shall accord to goods of the other Party, to suppliers of such goods, and to service suppliers of the other Party, treatment no less favorable than the most favorable treatment accorded to:

(a) its own goods and suppliers; and

(b) the goods and suppliers of another Party.

2. With respect to measures covered by this Chapter, no Party may:

(a) accord to a supplier established in its territory treatment less favorable than that accorded to another supplier established in that territory by reason of the degree of foreign affiliation or ownership; or

(b) discriminate against a supplier established in its territory on the grounds that the goods or services offered by that supplier for a particular purchase are goods or services of the other Party.

3. Paragraph 1 shall not apply to measures relating to customs duties or other charges of any kind imposed on or in connection with the collection of such duties and charges, or to other import regulations, including restrictions and formalities.

Article 14-05. Rules of Origin.

For purposes of government procurement covered by this Chapter, neither Party shall apply rules of origin to goods imported from any other Party that are different from or inconsistent with those contained in Chapter V (Rules of Origin).

Article 14-06. Denial of Benefits.

A Party may deny benefits under this Chapter to a service supplier of the other Party, after notification and consultations, where the Party determines that the service is being provided by an enterprise that does not conduct substantial business activities in the territory of either Party and is owned or controlled by persons of a non-Party.

Article 14-07. Prohibition of Special Compensatory Conditions.

Each Party shall ensure that its entities do not take into account, request or impose special countervailing conditions in the qualification and selection of suppliers, goods or services, in the evaluation of tenders or in the award of contracts. For the purposes of this Article, special compensatory conditions are those that an entity imposes or takes into account prior to or during the procurement procedure to promote local development or improve the balance of payments accounts, through

local content requirements, licensing of technology, investment, countertrade or similar requirements.

Article 14-08. Technical Specifications.

1. Each Party shall ensure that its entities do not develop, adopt or apply any technical specifications that have the purpose or effect of creating unnecessary obstacles to trade.

2. Each Party shall ensure that, where appropriate, any technical specification that its entities provide is:

(a) is defined in terms of performance criteria rather than design or descriptive characteristics; and

(b) is based on international standards, national technical regulations, recognized national standards, or building codes.

3. Each Party shall ensure that the technical specifications stipulated by its entities do not require or refer to a particular brand or trade name, patent, design or type, specific origin or producer or supplier, unless there is no other sufficiently precise or understandable way of describing the requirements of the purchase and provided that, in such cases, words such as "or equivalent" are included in the bidding documents.

4. Each Party shall ensure that its entities do not solicit or accept, in a manner that would have the effect of precluding competition, advice that could be used in preparing or adopting any technical specification in respect of a particular procurement from a person that may have a commercial interest in that procurement.

Section C. Bidding Procedures

Article 14-09. Bidding Procedures.

1. Each Party shall ensure that the tendering procedures of its entities:

(a) are applied in a non-discriminatory manner; and

(b) are consistent with this Article and Articles 14-10 through 14-16.

2. In this regard, each Party shall ensure that its entities:

(a) do not provide to any supplier information about a particular purchase in a manner that has the effect of preventing competition; and

(b) provide all suppliers equal access to information regarding a procurement during the period prior to the issuance of any solicitation or bidding documents.

Article 14-10. Qualification of Suppliers.

1. Pursuant to Article 14-04, in the qualification of suppliers during the tendering procedure, no entity of a Party may discriminate between suppliers of the other Party or between domestic suppliers and suppliers of the other Party.

2. The qualification procedures followed by an entity shall be consistent with the following:

(a) the conditions for the participation of suppliers in tendering procedures shall be published sufficiently in advance to allow suppliers adequate time to initiate and, to the extent consistent with the efficient operation of the procurement process, complete qualification procedures;

(b) conditions for participation in tendering proceedings, including financial guarantees, technical qualifications and information necessary to demonstrate the financial, commercial and technical capability of suppliers, as well as verification of the supplier's compliance with such conditions, shall be limited to those essential to ensure the performance of the contract concerned;

(c) the financial, commercial and technical capacity of a supplier shall be determined on the basis of its overall activity, including both its activity in the territory of the supplier's Party and its activity in the territory of the Party of the procuring entity, if any;

(d) an entity may not use the qualification process, including the time it requires, for the purpose of excluding suppliers of the other Party from a list of suppliers or not considering them for a particular purchase;

(e) an entity shall recognize as qualified suppliers those suppliers of the other Party that are eligible to participate in a

particular purchase;

(f) an entity shall consider for a particular purchase those suppliers of the other Party that apply to participate in the purchase and have not yet been qualified, provided that sufficient time is available to complete the qualification procedure;

(g) an entity maintaining a standing list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time, and that all suppliers included in the list are notified of the cancellation or removal from the list;

(h) where, after publication of the solicitation in accordance with Article 14-11, a supplier that has not yet been qualified applies to participate in a particular procurement, the entity shall promptly initiate the qualification procedure;

(i) an entity shall communicate to any supplier that has applied for qualification the decision as to whether it has been qualified; and

(j) where an entity rejects a request for qualification or ceases to recognize the qualification of a supplier, the entity shall, upon request, promptly provide relevant information on the reasons for its action.

3. Each Party shall:

(a) ensure that each of its entities uses a single qualification procedure; where the entity establishes a need for a different procedure and, on request of the other Party, is prepared to demonstrate such need, it may use additional qualification procedures; and

(b) endeavor to minimize differences in the rating procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier on grounds such as bankruptcy or misrepresentation.

Article 14-11. Invitation to Participate.

1. Except as provided in Article 14-16, an entity shall publish an invitation to participate for all purchases in accordance with paragraphs 2, 3 and 5 in the appropriate publication set out in the annex to this Article.

2. The invitation to participate shall take the form of a solicitation, which shall contain the following information:

(a) a description of the nature and quantity of the goods or services to be purchased, including any future purchase options and, if possible:

(i) an estimate of when such options may be exercised; and

(ii) in the case of recurring contracts, an estimate of when subsequent solicitations may be issued;

(b) an indication of whether the bidding is open or selective;

(c) any dates for commencement or completion of delivery of the goods or services to be purchased;

(d) the address to which the request to be invited to bid or to qualify for the list of suppliers must be sent and the deadline for receipt of the request;

(e) the address to which bids should be sent and the deadline for receipt of bids;

(f) the address of the entity that will award the contract and that will provide any information necessary to obtain specifications and other documents;

(g) a statement of any economic or technical conditions, and of any financial guarantees, information and documents required from suppliers;

(h) the amount and method of payment of any amount to be paid for the bidding documents; and

(i) whether the entity is inviting bids for the purchase or lease, with or without an option to purchase.

3. Notwithstanding paragraph 2, an entity identified in Annex 2 to Article 14-02 or Annex 3 to Article 14-02 may use as an invitation to participate a scheduled purchase solicitation, which shall contain the information in paragraph 2 to the extent available to the entity, but which shall include, at a minimum, the following information:

(a) a description of the subject matter of the purchase;

(b) the time limits for receipt of tenders or requests to be invited to tender;

(c) the address from which documentation related to the purchase may be requested;

(d) an indication that interested suppliers shall express to the entity their interest in the procurement; and (e) identification of an information center at the entity where additional information may be obtained.

4. An entity that uses as an invitation to participate a scheduled procurement solicitation shall subsequently invite suppliers that have expressed an interest in the procurement to confirm their interest, based on information provided by the entity that shall include at least the information set out in paragraph 2.

5. Notwithstanding paragraph 2, an entity identified in Annex 2 to Article 14-02 or Annex 3 to Article 14-02 may use a solicitation relating to the qualification system as an invitation to participate. An entity using such a solicitation shall provide in a timely manner, in accordance with the considerations referred to in paragraph 8 of Article 14-15, information that allows all suppliers that have expressed an interest in participating in the procurement to have a real possibility to evaluate their interest. The information shall normally include the information required for the solicitation referred to in paragraph 2. The information provided to an interested supplier shall be provided without discrimination to all other interested suppliers.

6. In the case of selective tendering procedures, an entity maintaining a standing list of qualified suppliers shall insert annually, in the appropriate publication referred to in the Annex to this Article, a notice containing the following information:

(a) a listing of all current lists, including their headings, relating to the goods or services, or categories of goods or services to be procured through the lists;

(b) the conditions to be met by suppliers in order to be included in the lists and the methods by which each of those conditions will be verified by the entity concerned; and

(c) the period of validity of the lists and the formalities for their renewal.

7. Where, after publication of an invitation to participate, but before the expiry of the time limit for the opening or receipt of tenders, as stated in the invitations or tender documentation, the entity considers it necessary to amend or reissue the invitation or tender documentation, the entity shall ensure that the new or amended invitation or tender documentation is given the same publicity as the original documentation. Any important information provided to a supplier about a particular purchase shall be provided simultaneously to other interested suppliers in sufficient time to allow all interested suppliers adequate time to review the information and to respond.

8. An entity shall state in the solicitations referred to in this article that the purchase is covered by this chapter.

Article 14-12. Selective Tendering Procedures.

1. In order to ensure optimal effective competition among suppliers of the Parties in selective tendering procedures, an entity shall invite as many domestic suppliers and suppliers of the other Parties for each purchase as is consistent with the efficient operation of the procurement system.

2. Subject to paragraph 3, an entity that maintains a standing list of qualified suppliers may select from among the suppliers on the list those to be invited to tender for a particular purchase. In the selection process, the entity shall provide an equal opportunity to suppliers on the list.

3. Pursuant to Article 14-10(2)(f), an entity shall permit a supplier requesting to participate in a particular purchase to submit a tender and shall consider that tender. The number of additional suppliers permitted to participate shall be limited only for reasons of efficient operation of the procurement system.

4. When not inviting or admitting a supplier to tender, an entity shall, at the request of the supplier, promptly provide the supplier with relevant information on the reasons for its action.

Article 14-13. Time Limits for Tendering and Delivery.

1. An entity shall:

(a) in setting a time limit, shall provide suppliers of the other Party sufficient time to prepare and submit tenders, prior to the closing of the tendering period;

(b) in setting a deadline, in accordance with its own reasonable needs, shall take into account factors such as the complexity of the purchase, the anticipated degree of subcontracting, and the time normally required to transmit tenders by mail, whether from overseas locations or within the national territory; and

(c) in establishing the closing date for the receipt of bids or applications for admission to bidding, shall give due consideration to delays in publication.

2. Subject to paragraph 3, an entity shall provide that:

(a) in open tendering procedures, the time limit for receipt of a tender is not less than 40 days from the date of publication of a solicitation in accordance with Article 14-11;

(b) in selective tendering proceedings not involving the use of a standing list of qualified suppliers, the time period for the submission of an application for admission to tender shall be not less than 25 days from the date of publication of a solicitation, in accordance with Article 14-11, and the time period for the receipt of tenders shall be not less than 40 days from the date of publication of a solicitation; and

(c) in selective tendering procedures involving the use of a standing list of qualified suppliers, the period for the receipt of tenders shall be not less than 40 days from the date of the first invitation to tender, but where the latter date does not coincide with the date of publication of a solicitation referred to in Article 14-11, not less than 40 days shall elapse between the two dates.

3. An entity may reduce the time limits provided for in paragraph 2 in accordance with the following:

(a) as provided in paragraph 3 or 5 of Article 14-11, where a solicitation has been issued within a period of not less than 40 days and not more than 12 months, the 40-day period for receipt of tenders may be reduced to not less than 24 days;

(b) in the case of a second or subsequent publication relating to recurring contracts, pursuant to article 14-11, paragraph 2 (a), the 40-day period for the receipt of tenders may be reduced to not less than 24 days;

(c) where, for reasons of urgency duly justified by the entity, the time limits cannot be complied with, such time limits shall in no case be less than ten days from the date of publication of a solicitation in accordance with Article 14-11; or

(d) where an entity referred to in Annex 2 or 3 to Article 14-02 uses a solicitation referred to in paragraph 5 of Article 14-11 as an invitation to participate, the entity and the selected suppliers may fix, by mutual agreement, the time limits; however, in the absence of agreement, the entity may fix time limits that are sufficiently long to permit the proper submission of tenders, but in no case less than ten days.

4. In establishing the date for delivery of goods or services, and in accordance with its reasonable needs, an entity shall take into account factors such as the complexity of the purchase, the anticipated degree of subcontracting, and the time realistically required for the production, dispatch and transportation of the goods from the various places of supply.

Article 14-14. Basis for Tendering.

1. Where entities provide tender documentation to suppliers, the documentation shall contain all information necessary to enable suppliers to properly submit their tenders, including the information required to be published in the invitation to tender referred to in Article 14-11, paragraph 2, except the information required under Article 14-11, paragraph 2(h). The documentation shall also include:

(a) the address of the entity to which the tenders are to be sent and of the office designated to receive them;

(b) the address to which requests for additional information shall be sent;

(c) the date and time of the closing date for the receipt of bids and its period of validity;

(d) the persons accredited to attend the opening of the bids and the date, time and place of such opening;

(e) a statement of any conditions of an economic or technical nature and of any financial guarantees, information and documents required from the suppliers;

(f) a full description of the goods or services to be purchased and any other requirements, including technical specifications, certificates of conformity and any necessary drawings, designs and instructions;

(g) the criteria on which the award of the contract will be based, including any factors, other than price, to be considered in the evaluation of tenders and the cost elements to be taken into account in evaluating tender prices, such as transportation,

insurance and inspection charges and, in the case of goods or services of the other Party, customs duties and other import charges, taxes and currency of payment;

(h) the terms of payment; and

(i) any other stipulations or conditions.

2. An entity shall:

(a) provide the terms and conditions of tender upon request by a supplier participating in open tendering procedures or applying to participate in selective tendering procedures, and respond promptly to any reasonable request for clarification thereof; and

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

Article 14-15. Submission, Receipt and Opening of Tenders, and Award of Contracts.

1. An entity shall use procedures for the submission, receipt and opening of tenders, and the award of contracts that are consistent with the following:

(a) tenders shall be submitted in writing, either directly or by mail;

(b) when tenders transmitted by telex, telegram, facsimile or other means of electronic transmission are accepted, the tender submitted shall include all information necessary for evaluation, including the final price proposed by the supplier and a statement that the supplier accepts all terms and conditions of the invitation;

(c) Tenders submitted by telex, telegram, telefacsimile or other means of electronic transmission shall be confirmed promptly by letter or by a signed copy of the telex, telegram, telefacsimile or electronic message;

(d) the contents of the telex, telegram, telefacsimile or electronic message shall prevail in the event of any difference or inconsistency between it and any other documentation received after the deadline for receipt of bids has expired;

(e) the submission of bids by telephone shall not be permitted;

(f) applications for participation in selective bidding may be submitted by telex, telegram, telefacsimile and, where permitted, by other means of electronic transmission; and

(g) opportunities to correct unintentional errors of form, which are afforded to suppliers during the period between the opening of tenders and the award of the contract, shall not be used in such a manner as to discriminate between suppliers.

2. For the purposes of paragraph 1, "means of electronic transmission" includes the means by which the recipient can produce a hard copy of the tender at the place of destination of the transmission.

3. No entity shall penalize a supplier whose tender is received at the office designated in the tender documentation after the expiration of the time limit, where the delay is due solely to an oversight by the entity.

4. All tenders solicited by an entity in open or selective tendering procedures shall be received and opened in accordance with procedures and under conditions that ensure the regularity of the opening of tenders. The entity shall retain information relating to the opening of tenders. The information shall remain available to the competent authorities of the Party for use, if required, in accordance with Articles 14-17, 14-19 or Chapter XIX (Dispute Settlement).

5. An entity shall award contracts in accordance with the following:

(a) for a tender to be considered for award, it shall, at the time of opening, comply with the requirements set forth in the invitation to tender or the bidding documents and be from suppliers that comply with the conditions for participation;

(b) if the entity receives a tender that is abnormally lower in price than other tenders submitted, the entity may inquire with the supplier to ensure that the supplier satisfies the conditions of participation and is or will be capable of fulfilling the terms of the contract;

(c) the entity shall award the contract to the supplier that it has determined to be capable of performing the contract and whose tender is the lowest priced or most advantageous in accordance with the specific evaluation criteria set forth in the invitation to tender or in the bidding documents, unless the entity decides not to award the contract in the public interest;

d) awards shall be made in accordance with the criteria and requirements established in the bidding documents; and

(e) option clauses shall not be used to circumvent this chapter.

6. No entity of a Party may make the award of a procurement contract conditional on a supplier having previously been awarded one or more contracts by an entity of that Party, or on the supplier's previous work experience in the territory of that Party.

7. An entity shall:

(a) upon the specific request of participating suppliers, promptly inform them of decisions regarding awarded procurement contracts and, if requested by them, shall do so in writing; and

(b) upon the specific request of a supplier whose tender was not selected, provide the supplier with relevant information concerning the reasons why its tender was not selected, the characteristics and advantages of the selected tender, and the name of the successful supplier.

8. Not later than 72 days after the award of the procurement contract, an entity shall insert a notice in the appropriate publication referred to in the annex to Article 14-11 containing the following information:

(a) a description of the nature and quantity of the goods or services that are the subject of the contract;

(b) the name and address of the entity awarding the contract;

(c) the date of the award;

(d) the name and address of each supplier selected;

(e) the value of the contract or of the highest and lowest price bids considered for the award of the contract; and

(f) the bidding procedure used.

9. Notwithstanding paragraphs 1 through 8, an entity may withhold certain information about the award of the procurement contract where disclosure of that information

(a) would impede law enforcement or would be contrary to the public interest;

(b) would prejudice the legitimate commercial interests of a particular person; or

(c) would be detrimental to fair competition among suppliers.

Article 14-16. Restricted Tendering.

1. An entity of a Party may, in the circumstances and in accordance with the conditions described in paragraph 2, use restricted tendering procedures and thereby deviate from Articles 14-09 through 14-15, provided that restricted tendering procedures are not used to avoid the maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Party or of protection of domestic suppliers.

2. An entity may use restricted tendering procedures in the following circumstances and under the following conditions, as appropriate:

(a) in the absence of tenders in response to an open or selective invitation to tender or where tenders submitted have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where tenders have been made by suppliers that do not meet the conditions for participation provided for in accordance with this Chapter, provided that the requirements of the initial purchase are not substantially modified in the award of the contract;

(b) when, in the case of works of art or for reasons related to the protection of patents, copyrights or other exclusive rights, or proprietary information, or for technical reasons there is no competition, the goods or services can only be supplied by a particular supplier, and there are no reasonable alternatives or substitutes;

(c) to the extent strictly necessary when, for reasons of extreme urgency due to events unforeseeable by the entity, it would not be possible to obtain the goods or services in time through competitive or selective bidding;

(d) for additional deliveries from the initial supplier either as replacement parts or continuing services for existing materials, services or facilities, or as an extension of existing materials, services or facilities, where a change of supplier would require the entity to purchase equipment or services that do not conform to the requirement of being interchangeable with existing

equipment or services, including computer software, to the extent that the initial purchase of the equipment or services was covered by this chapter;

e) when an entity acquires prototypes or a first good or service to be manufactured at its request in the course of and for the performance of a particular contract for research, experimentation, study or original manufacture. Once such contracts have been fulfilled, the purchase of goods or services made as a result thereof shall be in accordance with Articles 14-09 through 14-15. The original development of a first good may include its production in limited quantity in order to take into account the results of tests in practice and to demonstrate that the product lends itself to mass production, satisfying acceptable standards of quality, but does not include mass production to determine commercial viability or to recover research and development costs;

(f) for goods purchased in a commodity market;

(g) for purchases made on exceptionally favorable terms that are offered only on very short-term terms, such as extraordinary disposals made by companies that are not normally suppliers; or to the disposal of assets of companies in liquidation or under receivership, but does not include ordinary purchases made from regular suppliers;

(h) for contracts to be awarded to the winner of an architectural design competition, provided that the competition is:

(i) organized in accordance with the principles of this chapter, including with respect to the publication of the invitation to suppliers qualified to compete;

(ii) organized in such a way that the design contract is awarded to the winner; and (iii) submitted to an independent jury; and

(i) when an entity requires consulting services related to matters of a confidential nature, the disclosure of which could reasonably be expected to compromise confidential public sector information, cause serious economic harm or, similarly, be contrary to the public interest.

3. Each report shall contain the name of the procuring entity, the value and kind of goods or services procured, the country of origin, and a statement of the circumstances and conditions described in paragraph 2 that justified the use of restricted tendering. The entity shall keep each report available to the competent authorities of the Party for use, if required, in accordance with Articles 14-17, 14-19 or Chapter XIX (Dispute Settlement).

Section D. Challenge Procedures

Article 14-17. Challenge Procedures.

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain challenge procedures for purchases covered by this Chapter in accordance with the following:

(a) each Party shall permit suppliers to have recourse to the challenge procedure in connection with any aspect of the procurement process which, for purposes of this Article, commences from the time an entity has defined its procurement requirement and continues until the award of the contract;

(b) before initiating a challenge procedure, a Party may encourage the supplier to seek, with the procuring entity, a resolution of its complaint;

(c) each Party shall ensure that its entities consider, in a timely and impartial manner, any complaint or challenge with respect to procurement covered by this Chapter;

(d) whether or not a supplier has attempted to resolve its complaint with the entity or after failing to reach a successful resolution, no Party may prevent the supplier from initiating a challenge procedure or seeking other relief;

(e) a Party may require a supplier to notify the entity of the initiation of a challenge procedure;

(f) a Party may limit the period within which a supplier may initiate the challenge procedure, but in no case shall this period be less than ten working days from the time the supplier becomes aware of the basis of the complaint or it is considered that the supplier should have become aware of the basis of the complaint;

(g) each Party shall establish or designate a review authority without substantial interest in the outcome of the procurement to receive challenges and issue the relevant determinations and recommendations;

(h) upon receipt of the challenge, the reviewing authority shall proceed to investigate the challenge in an expeditious manner;

(i) a Party may require its reviewing authority to limit its considerations to the challenge itself;

(j) in investigating the challenge, the reviewing authority may delay the award of the proposed procurement contract until the challenge is resolved, except in cases of urgency or where delay would be contrary to the public interest;

(k) the reviewing authority shall issue a decision on the challenge, which may include directions to the entity to reevaluate the bids, terminate the contract, or recompete the contract;

(l) entities shall follow the decisions of the reviewing authority;

(m) at the conclusion of the challenge procedure, each Party shall empower its reviewing authority to make further written recommendations to an entity regarding any phase of its procurement process that has been found to be problematic during the challenge investigation, including recommendations for changes to the entity's procurement procedures, in order to be consistent with this Chapter;

(n) The reviewing authority shall provide, in a timely manner and in writing, the result of its findings and its recommendations with respect to the challenges, and make them available to the Parties and interested persons;

(o) each Party shall specify in writing and make generally available all of its challenge procedures; and

(p) in order to verify that the procurement process was conducted in accordance with this Chapter, each Party shall ensure that each of its entities maintains complete documentation relating to each of its purchases, including a written record of all communications substantially affecting each purchase, for a period of at least three years from the date on which the contract was awarded.

2. A Party may request that the challenge procedure not be initiated until after the solicitation has been published or, if not published, after the bidding documents are available. Where a Party establishes such a requirement, the ten working day period referred to in paragraph 1(f) shall not begin to run until the date on which the invitation has been published or the tender documentation is available.

Section E. General Provisions

Article 14-18. Exceptions.

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or refraining from disclosing information that it considers necessary to protect its essential security interests in connection with the procurement of arms, ammunition or war material, or any other procurement indispensable for national security or national defense purposes.

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

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

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

(c) necessary to protect intellectual property; or

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

Article 14-19. Provision of Information.

1. In addition to Article 17-02 (Publication), each Party shall promptly publish any laws, regulations, case law, administrative rulings of general application and any procedures, including model contract clauses relating to government procurement covered by this Chapter, by inserting them in the relevant publications referred to in the Annex to this Article.

2. Each Party shall:

(a) explain to the other Party, upon request, its government procurement procedures;

(b) ensure that its entities, upon request by a supplier, promptly explain their government procurement practices and procedures; and

(c) designate, not later than the entry into force of this Agreement, one or more information centers to:

(i) facilitate communication between the Parties; and

(ii) respond, upon request, to all reasonable inquiries from the other Party to provide relevant information on matters covered by this Chapter.

3. A Party may request additional information on the award of the contract that may be necessary to determine whether a purchase was made in accordance with the provisions of this Chapter with respect to unsuccessful bids. For this purpose, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the successful bid and the contract price. Where disclosure of this information may prejudice competition in future tenders, the requesting Party may not disclose the information except after consulting with and obtaining the consent of the Party that provided the information.

4. Each Party shall provide to the other Party, upon request, information available to that Party or its entities on covered procurement by its entities and on individual contracts awarded by its entities.

5. No Party may disclose confidential information, the disclosure of which would prejudice the legitimate commercial interests of a particular person or be detrimental to fair competition between suppliers, without the formal authorization of the person who provided that information to the Party.

6. Nothing in this Chapter shall be construed to require a Party to provide confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. With a view to ensuring effective monitoring of purchases covered by this Chapter, each Party shall collect statistics and provide to the other Party an annual report in accordance with the following requirements, unless the Parties agree otherwise:

(a) statistics on the estimated value of contracts awarded, both below and above the value of the applicable thresholds, broken down by entity;

(b) statistics on the number and total value of contracts above the value of the applicable thresholds, broken down by entity, by category of goods and services established in accordance with the classification systems developed under this Chapter, and by country of origin of the goods and services procured;

(c) statistics on the number and total value of contracts awarded under Article 14-16, broken down by entity, by category of goods or services, and by country of origin of the goods or services procured; and

(d) statistics on the number and total value of contracts awarded under the exceptions to this Chapter set forth in Annexes 8 and 9 to Article 14-02, broken down by entity.

8. Each Party may organize by state or department, as the case may be, any portion of the report referred to in paragraph 7 that corresponds to the entities listed in Annex 3 to Article 14-02.

Article 14-20. Technical Cooperation.

1. The Parties shall cooperate, on mutually agreed terms, to achieve greater understanding of their government procurement systems, with a view to achieving greater access to government procurement opportunities for suppliers of either Party.

2. Each Party shall provide to the other Party and to suppliers of the other Party, on a cost recovery basis, information concerning training and orientation programs relating to its government procurement systems, and non-discriminatory access to any programs it conducts.

3. The training and orientation programs referred to in paragraph 2 include:

(a) training of government sector personnel directly involved in government procurement procedures;

(b) training of suppliers interested in taking advantage of government procurement opportunities;

(c) explanation and description of specific aspects of each Party's government procurement system, such as its challenge mechanism; and

(d) information regarding government procurement market opportunities.

4. Each Party shall, no later than the entry into force of this Agreement, establish at least one point of contact to provide information on the training and orientation programs referred to in this Article.

Article 14-21. Joint Participation Programs for Micro, Small and Medium-sized Industries.

1. The Parties establish the Micro, Small and Medium Industry Working Group, composed of representatives of each Party. The Working Group shall meet by agreement of the Parties at least once a year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their micro, small and medium-sized industries.

2. The Working Group shall facilitate the following activities:

(a) the identification of available opportunities for the training of personnel of micro, small and medium-sized industries in government procurement procedures;

(b) the identification of micro, small and medium industries interested in becoming business partners of micro, small and medium industries in the territory of the other Party;

(c) the development of databases on micro, small and medium-sized industries in the territory of each Party for use by entities of the other Party wishing to make purchases from smaller scale enterprises;

(d) conducting consultations regarding the factors that each country uses to establish its eligibility criteria for any micro, small, and medium-sized industry program; and

(e) conducting activities to address any related matters.

Article 14-22. Rectifications or Modifications.

1. A Party may modify its coverage under this Chapter only in exceptional circumstances.

2. When a Party modifies its coverage under this chapter:

(a) notify its national section of the Secretariat and the other Party of the modification;

(b) incorporate the change in the relevant Annex; and

(c) propose to the other Party appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding paragraphs 1 and 2, a Party may make formal rectifications and minor amendments only to its schedules to Annexes 1 to 6 to Article 14-02 and Annexes 8 and 9 to the same Article, provided that it notifies the other Party and its national section of the Secretariat of such rectifications, and no Party expresses its objection to the proposed rectifications within a period of 30 days. In such cases, it shall not be necessary to propose compensation.

4. Notwithstanding other provisions of this Chapter, a Party may reorganize its entities covered by this Chapter, including programs for the decentralization of the procurement of such entities or programs that result in the corresponding public functions no longer being carried out by any public sector entity, whether or not covered by this Chapter. In such cases, it shall not be necessary to propose compensation. No Party may undertake such reorganizations or programs for the purpose of avoiding compliance with the obligations of this Chapter.

5. Where a Party considers that:

(a) the adjustment proposed pursuant to paragraph 2(c) is not adequate to maintain a level comparable to that of the mutually agreed coverage; or

(b) a rectification or minor amendment pursuant to paragraph 3 or a reorganization pursuant to paragraph 4 does not meet the requirements of those paragraphs and, as a result, requires compensation;

the Party may have recourse to the dispute settlement procedure under Chapter XIX (Dispute Settlement).

Article 14-23. Disposal of Entities.

1. Nothing in this Chapter shall be construed to prevent a Party from disposing of an entity covered by this Chapter.

2. If, by means of a public offering of shares of an entity listed in Annex 2 to Article 14-02, or by other methods, the entity ceases to be subject to federal or central government control, as the case may be, the Party may remove that entity from its list in that Annex and withdraw the entity from coverage under this chapter, after notifying the other Parties and its national section of the Secretariat.

3. Where a Party objects to the removal of the entity on the grounds that the entity in question remains subject to federal or central government control, as the case may be, it may have recourse to the dispute settlement procedure under Chapter XIX (Dispute Settlement).

Article 14-24. Future Negotiations.

1. The Parties undertake to enter into negotiations no later than January 1, 1998 to improve the terms of this Chapter.

2. In those negotiations, the Parties shall review all aspects of their government procurement practices for the purpose of:

(a) evaluating the operation of their government procurement systems;

(b) seek to expand the coverage of the Chapter by incorporating:

(i) other government enterprises; and

ii) purchases subject, in some way, to legislative or administrative exemptions; and c) review the value of the thresholds.

3. Prior to such review, the Parties shall consult with their state governments and departmental entities with a view to reaching commitments, on a voluntary and reciprocal basis, for the incorporation into this Chapter of purchases by entities and enterprises of state governments and departmental entities.

Chapter XV. Investment

Section A. Investment

Article 15-01. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

ICSID: the International Centre for Settlement of Investment Disputes;

ICSID Convention: the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded in Washington, D.C. on March 18, 1965;

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

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

claim: a claim by a disputing investor against a Party based on an alleged violation of the provisions of this Chapter;

enterprise of a Party: an enterprise constituted or organized under the laws of a Party and a branch office located in the territory of a Party and carrying on business therein; investment:

(a) the application or transfer of resources to the territory of a Party by investors of the other Party for the purpose of profit;

(b) the participation of investors of a Party, in any proportion in the capital stock, of enterprises of the other Party or in activities covered by the investment laws of that other Party; or

(c) that made pursuant to subparagraphs (a) and (b) by an enterprise of a Party with a majority of the capital owned or controlled by investors of the other Party;

investment does not include:

(a) an obligation to pay a credit to a State enterprise or the granting thereof;

b) pecuniary claims arising exclusively from:

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

(ii) the extension of a credit in connection with a commercial transaction, the maturity date of which is less than three years, such as trade financing;

investment of an investor of a Party: an investment owned or controlled directly or indirectly by an investor of a Party;

investor of a Party: a Party or an enterprise of the State of that Party, or a national or enterprise of that Party, that carries out the legal acts intended to materialize an investment, or that makes or has made an investment in the territory of the other Party;

disputing investor: an investor that submits a claim to arbitration under the terms of Section B;

national of a Party: a natural person who is a national of a Party in accordance with its law;

disputing Party: the Party against which a claim is made under section B;

disputing party: the disputing investor or the disputing Party;

disputing parties: the disputing investor and the disputing Party;

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

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

Secretary-General: the Secretary-General of ICSID;

transfers: international remittances and payments; tribunal: an arbitral tribunal established in accordance with Article 15-21;

consolidation tribunal: an arbitral tribunal established under Article 15-27.

Article 15-02. Scope of Application.

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

(a) investors of the other Party;

(b) investments of investors of a Party made in the territory of the other Party; and

(c) with respect to Article 15-05, all investments in the territory of the other Party.

2. This Chapter applies in the territory of each Party, at any level or order of government, notwithstanding any inconsistent measures that may exist in their respective laws, except as provided in Article 15-07.

3. This Chapter does not apply to:

(a) economic activities reserved to each Party, in accordance with its legislation in force, which shall be listed no later than one year after the entry into force of this Agreement;

(b) measures adopted or maintained by a Party relating to financial services; and

c) measures adopted by a Party to restrict the participation of investments of investors of the other Party in its territory for reasons of national security.

Article 15-03. National Treatment

1. Each Party shall accord to investors of the other Party, and to investments of investors of the other Party, treatment no less favorable than that it accords, in like circumstances, to its own investors.

2. Each Party shall accord to investors of the other Party, with respect to investments that suffer losses in its territory due to armed conflict or civil strife, or acts of God or force majeure, nondiscriminatory treatment with respect to any measures it adopts or maintains with respect to such losses.

Article 15-04. Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party, and to investments of investors of the other Party, treatment no less favorable than that it accords, in like circumstances, to investors and investments of investors of the other Party or of a non-Party, except as provided in paragraph 2.

2. If a Party has accorded or hereafter accords special treatment to investors or their investments from a non- Party under conventions establishing double taxation avoidance provisions, free trade areas, customs unions, common markets, economic or monetary unions or similar institutions, that Party shall not be required to accord the treatment in question to investors or investments of the other Party.

Article 15-05. Performance Requirements

1. No Party may impose or enforce the following requirements or commitments with respect to any investment in its territory:

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

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

(c) to purchase, use or give preference to goods produced or services provided in its territory, or to purchase goods from producers or services from service providers in its territory;

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

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

(f) to transfer to a person in its territory, technology, production process or other proprietary know-how, except where the requirement is imposed by a judicial or administrative tribunal or competent authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides for a specific regional or world market.

2. Paragraph 1 does not apply to any requirement other than those set out in paragraph 1.

3. No Party may condition the receipt or continued receipt of an incentive on compliance with the following requirements in relation to any investment in its territory:

(a) acquiring, using or giving preference to goods produced in its territory or purchasing goods from producers in its territory;

(b) to attain a certain degree or percentage of domestic content;

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

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

4. Paragraph 3 does not apply to a requirement other than those set out in paragraph 3.

5. Nothing in paragraphs 1 and 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an incentive, in connection with any investment in its territory, on requirements regarding the geographic location of production units, the generation of employment or training of labor, or the conduct of research and development activities.

Article 15-06. Senior Management and Boards of Directors.

1. No Party may require its companies to appoint individuals of any particular nationality to senior management positions.

2. A Party may require that a majority of the members of the management bodies of an enterprise be of a particular nationality, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 15-07. Reservations and Exceptions

1. Articles 15-03 through 15-06 do not apply to any inconsistent measure maintained by a Party under its law in force at the entry into force of this Agreement, regardless of the level or order of government. Each Party shall list such measures in Annex 1 to this Article no later than one year after entry into force. Any future measures adopted by a Party shall not be more restrictive than those existing at the time of entry into force of this Agreement.

2. Articles 15-03 through 15-06 shall not apply to any inconsistent measure adopted or maintained by a Party with respect to the activities listed in Annex 2 to this Article at the time of signature of this Agreement. The Parties, in adopting or maintaining the incompatible measures referred to, shall seek to achieve an overall balance in their obligations. After a period of two years from the entry into force of this Agreement, any measure adopted by a Party may not be more restrictive than those existing at the end of this Agreement.

3. The treatment accorded by a Party pursuant to Article 15-04 does not apply to the treaties or sectors set out in its list in the Annex to this Article.

4. Articles 15-03, 15-04 and 15-06 do not apply to:

(a) procurement by a Party or by a state enterprise; or

(b) subsidies or grants, including government loans, guarantees and insurance provided by a Party ora state enterprise.

5. The provisions contained in:

(a) subparagraphs (a) through (c) of paragraph 1 and subparagraphs (a) and (b) of paragraph 3 of Article 15-05 do not apply with respect to requirements for qualification of goods and services with respect to export promotion programs;

(b) subparagraphs (b), (c), (f) and (g) of paragraph 1 and subparagraphs (a) and (b) of paragraph 3 of Article 15-05 do not apply to procurement by a Party or by a state enterprise; and

(c) subparagraphs (a) and (b) of paragraph 3 of Article 15-05 do not apply to requirements imposed by an importing Party relating to the necessary content of goods to qualify for preferential tariffs or quotas.

Article 15-08. Transfers

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

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, profits in kind and other amounts derived from the investment;

(b) proceeds from the sale or liquidation, in whole or in part, of the investment;

(c) payments made under a contract to which an investor or its investment is a party, including payments made under a loan agreement;

(d) payments arising from compensation for expropriation; and

(e) payments arising from the application of the provisions relating to the dispute settlement mechanism.

2. Each Party shall permit transfers to be made in freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding the provisions of paragraphs 1 and 2, each Party may prevent transfers, through the equitable and non-discriminatory application of its laws, in the following cases:

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

(b) issuance, trading and operations of securities;

(c) criminal or administrative offenses;

(d) reports of transfers of currency or other monetary instruments; or

(e) security for the enforcement of judgments or awards in an adversary proceeding.

4. Notwithstanding the provisions of this Article, each Party may establish temporary controls on foreign exchange transactions, provided that the balance of payments of the Party in question shows an imbalance and implements a program in accordance with internationally accepted criteria.

Article 15-09. Expropriation and Compensation

1. No Party may nationalize or expropriate, directly or indirectly, an investment of an investor of the other Party in its territory, or take an equivalent measure ("expropriation"), except:

(a) in the national interest or in the public interest;

(b) on a non-discriminatory basis;

(c) in accordance with the principle of legality; and

(d) through compensation in accordance with paragraphs 2 through 4.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value due to the fact that the intention to expropriate was known prior to the date of expropriation. The valuation criteria will include the declared tax value of tangible assets, as well as other criteria that are appropriate for determining fair market value.

3. Payment of compensation shall be made promptly and shall be fully liquidable.

4. The amount paid shall not be less than the equivalent amount of compensation that would have been paid in a freely convertible currency on the international financial market on the date of expropriation, and such currency would have been converted at the market rate prevailing on the date of valuation, plus interest at a reasonable commercial rate for such currency up to the date of payment.

Article 15-10. Special Formalities and Reporting Requirements.

1. Nothing in Article 15-03 shall be construed to prevent a Party from adopting or maintaining a measure prescribing special formalities in connection with the establishment of investments by investors of the other Party, such as that the investments be constituted in accordance with the laws of the Party, provided that such formalities do not substantially impair the protection afforded by a Party under this Chapter.

2. Notwithstanding Articles 15-03 and 15-04, each Party may require an investor of the other Party or its investment in its territory to provide routine information relating to that investment solely for informational or statistical purposes. The Party shall protect information that is confidential from any disclosure that could adversely affect the competitive position of the investment or the investor.

Article 15-11. Relationship with other Chapters

In the event of inconsistency between a provision of this Chapter and a provision of another Chapter, the provision of the latter shall prevail to the extent of the inconsistency.

Article 15-12. Denial of Benefits

After notice to and consultation with the other Party, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party, and to investments of that investor, where investors of a non-Party majority own or control the enterprise and the enterprise does not have substantial business activities in the territory of the Party under whose law it is incorporated or organized.

Article 15-13. Extraterritorial Application of a Party's Law.

1. A Party may not, with respect to investments of its investors constituted and organized under the laws of the other Party, exercise jurisdiction or take any action that has the effect of extraterritorially applying its laws or hindering trade between the Parties, or between a Party and a non-Party.

2. If a Party fails to comply with the provisions of paragraph 1, the Party where the investment has been constituted may adopt such measures and take such action as it considers necessary to terminate the legislation or measure in question and

the obstacles to trade resulting therefrom.

Article 15-14. Measures Concerning Environment, Health and Safety

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Chapter that it considers appropriate to ensure that investments in its territory comply with environmental laws.

2. The Parties recognize that it is inappropriate to encourage investment by mitigating domestic environmental, health and safety measures. Accordingly, no Party should eliminate, or undertake to exempt from the application of such measures, investors or their investments as a means of inducing the establishment, acquisition, expansion or retention of investment in its territory. If a Party considers that the other Party has encouraged an investment in such a manner, it may request consultations with that other Party.

Article 15-15. Investment Promotion and Exchange of Information.

1. With the intention of significantly increasing reciprocal participation in investment, each Party shall develop documents for the promotion of investment opportunities and design mechanisms for their dissemination, and the Parties shall maintain and improve financial mechanisms that make investments by an investor of one Party in the territory of the other Party viable.

2. Each Party shall disseminate detailed information on opportunities for:

(a) investment in its territory that may be developed by investors of the other Party;

(b) strategic alliances between investors of the Parties, through research and compilation of interests and partnership opportunities; or

(c) investment in specific economic sectors of interest to the Parties and their investors, as expressly requested by either Party.

3. The Parties agree to keep each other informed and updated regarding:

(a) the investment opportunities referred to in paragraph 2, including the dissemination of available financial instruments that assist in increasing investment in the territory of each Party;

(b) legislation or regulations affecting, directly or indirectly, foreign investment, including, inter alia, foreign exchange and taxation regimes; or

(c) the performance of foreign investment in the territory of each Party.

Article 15-16. Double Taxation.

The Parties, with the aim of promoting investment within their respective territories by eliminating tax obstacles and monitoring compliance with tax obligations through the exchange of tax information, agree to initiate negotiations for the conclusion of agreements to avoid double taxation, in accordance with the schedule to be established between the competent authorities of the Parties.

Section B. Dispute Settlement between a Party and an Investor of the other Party

Article 15-17. Objective.

This section establishes a mechanism for the settlement of investment disputes arising from the entry into force of this Agreement between one or more investors of one Party and another Party, based on the ground that the other Party has breached an obligation set forth in this Chapter, and which ensures both equal treatment between investors of the Parties in accordance with the principle of international reciprocity and the due exercise of the guarantee of a hearing and defense in a legal proceeding before an impartial tribunal.

Article 15-18. Dispute Settlement Through Consultation and Negotiation.

The disputing parties shall first attempt to settle the dispute by consultation or negotiation.

Article 15-19. Claim by an Investor of a Party on Its Own Account or on Behalf of an Enterprise.

1. Pursuant to this Section, only an investor of a Party may, on its own account or on behalf of an enterprise of the other Party that is a juridical person owned or controlled directly or indirectly by it, submit to arbitration a claim that the other Party, or an enterprise controlled directly or indirectly by it, has breached an obligation under this Chapter, provided that the enterprise has suffered loss or damage by reason of, or arising out of, the breach.

2. The investor may not bring a claim under this Section if more than three years have elapsed from the date on which it knew or should have known of the alleged breach of its investment and of the loss or damage suffered.

3. Where an investor submits a claim on behalf of an enterprise that is a juridical person owned or controlled directly or indirectly by the investor, and at the same time an investor that does not control an enterprise submits a claim on its own account arising out of the same acts, or two or more claims are submitted to arbitration under the same measure adopted by a Party, the consolidation tribunal established under Article 15-27 shall consider those claims together, unless that tribunal determines that the interests of a disputing party would be prejudiced.

4. Where an enterprise of a Party that is a juridical person owned or controlled directly or indirectly by one or more investors of the other Party alleges in court proceedings that another Party has allegedly breached an obligation under Section A, the investor or investors may not assert the alleged breach in arbitral proceedings under this Section.

5. An investment or an enterprise may not submit a claim to arbitration under this Section.

Article 15-20. Notice of Intent to Submit Claim to Arbitration.

The disputing investor shall notify the disputing Party in writing of its intention to submit a claim to arbitration at least 90 days before the claim is formally submitted and the notice shall state the following:

(a) the name and address of the disputing investor and, where the claim is made on behalf of an enterprise, the name or business name and address of the enterprise;

(b) the provisions of this Chapter alleged to have been breached and any other applicable provisions;

(c) the facts on which the claim is based; and

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

Article 15-21. Submission of Claim to Arbitration

1. Provided that six months have elapsed since the measures giving rise to the claim took place, a disputing investor may submit the claim to arbitration in accordance with:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are States parties thereto;

(b) the ICSID Additional Facility Rules, where either the disputing Party or the Party of the investor, but not both, are States parties to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2- Except as provided in Article 15-27 and provided that both the disputing Party and the Party of the disputing investor are States parties to the ICSID Convention, any dispute between them shall be submitted in accordance with paragraph 1(a).

3. The rules to be chosen pursuant to an arbitral proceeding under this Chapter shall apply except as modified by this Section.

Article 15-22. Conditions Precedent to the Submission of a Claim to Arbitral Proceedings

1. A disputing investor on its own account or on behalf of an enterprise may submit a claim to arbitration under this Section only if:

(a) in the case of the self-employed disputing investor, the self-employed disputing investor consents to arbitration under the terms of the procedures set forth in this Section;

(b) in the case of the disputing investor on behalf of an enterprise, both the disputing investor and the enterprise consent to arbitration on the terms of the procedures set forth in this Section; and

(c) both the disputing investor and, where applicable, the enterprise it represents, waive their right to initiate proceedings before any judicial tribunal of any Party with respect to the measure alleged to be a breach of the provisions of this Chapter, except for the pursuit of administrative remedies before the authorities implementing the measure alleged to be a breach as provided in the law of the disputing Party.

2. The consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of the claim to arbitration.

Article 15-23. Consent to Arbitration

1. Each Party consents to the submission of claims to arbitration in accordance with the procedures and requirements set forth in this Section.

2. The submission of a claim to arbitration by a disputing investor shall comply with the requirements set out in:

(a) Chapter II of the ICSID Convention (Centre Jurisdiction) and the ICSID Additional Facility Rules requiring the written consent of the Parties;

b) Article II of the New York Convention, which requires an agreement in writing; and

c) Article I of the Inter-American Convention, which requires an agreement.

Article 15-24. Number of Arbitrators and Method of Appointment.

Except as provided in Article 15-27, and notwithstanding any agreement of the disputing parties to the contrary, the tribunal shall consist of three arbitrators. Each disputing party shall appoint one arbitrator; the third arbitrator, who shall be the chairman of the arbitral tribunal, shall be appointed by the disputing parties by mutual agreement.

Article 15-25. Composition of the Tribunal In the Event of Failure of a Disputing Party to Appoint an Arbitrator or Failure to Agree on the Appointment of the Chairman of the Arbitral Tribunal

1. The Secretary-General shall appoint arbitrators in arbitration proceedings in accordance with this Section. 2. Where a tribunal, other than a tribunal established pursuant to section 15-27, is not constituted within 90 days from the date on which the claim is submitted to arbitration, the Secretary-General shall, at the request of either disputing party, appoint, at his discretion, the arbitrator or arbitrators not yet appointed, but not the presiding arbitrator or arbitrators, who shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the president of the tribunal from among the arbitrators on the list referred to in paragraph 4, ensuring that the president of the tribunal is not a national of the disputing Party or a national of the Party of the disputing investor. In the event that an arbitrator available to chair the tribunal is not found on the list, the Secretary-General shall appoint, from the ICSID Panel of arbitrators, the chair of the tribunal, provided that the chair of the tribunal is not a national of the disputing Party or a national of the Party of the disputing investor.

4. Upon entry into force of this Agreement, the Parties shall establish and maintain a list of 15 arbitrators as potential chairpersons of the arbitral tribunal who meet the qualifications set forth in the ICSID Convention and the rules referred to in Article 15-21 and who have experience in international law and investment matters. The arbitrators on the list shall be appointed by consensus without regard to their nationality.

Article 15-26. Consent to Appointment of Arbitrators

For the purposes of Article 39 of the ICSID Convention and Article 7 of Part C of the ICSID Additional Facility Rules and, without prejudice to objecting to an arbitrator in accordance with paragraph 3 of Article 15-25 or on a basis other than nationality:

(a) the disputing Party accepts the appointment of each member of a tribunal established in accordance with the ICSID

Convention or the ICSID Additional Facility Rules;

(b) a disputing investor, whether on its own behalf or on behalf of an enterprise, may submit a claim to arbitration or continue proceedings under the ICSID Convention or the ICSID Additional Facility Rules only on condition that the disputing investor and, if any, the enterprise it represents consent in writing to the appointment of each of the members of the tribunal.

Article 15-27. Consolidation of Proceedings

1. A consolidation tribunal established under this Article shall be established in accordance with the UNCITRAL Arbitration Rules and shall proceed in accordance with the provisions of those rules, except as provided in this Section.

2. Where a consolidation tribunal determines that the claims submitted to arbitration under Article 15-21 raise common questions of law and fact, the consolidation tribunal, in the interest of their fair and efficient resolution, and having heard the disputing Parties, may assume jurisdiction, hear and determine:

(a) all or part of the claims jointly; or

(b) one or more of the claims on the basis that it will contribute to the resolution of the other claims.

3. A disputing party seeking a determination of joinder under paragraph 2 shall request the Secretary-General to establish a joinder tribunal and shall specify in its request:

(a) the name of the disputing Party or disputing investors against which the cumulation agreement is sought;

(b) the nature of the requested cumulation agreement; and

(c) the basis on which the requested request is supported.

4. Within 60 days from the date of the request, the Secretary-General shall set up a consolidation tribunal composed of three arbitrators. The Secretary-General shall appoint the chairman of the consolidation tribunal from the list of arbitrators referred to in article 15-25, paragraph 4. In the event that no arbitrator is available on the list to chair the consolidation tribunal, the Secretary-General shall appoint, from the ICSID Panel of arbitrators, the chair of that tribunal, who shall not be a national of the disputing Party or a national of the Party of the disputing investor. The Secretary-General shall appoint the other two members of the consolidation tribunal from the list referred to in paragraph 4 of Article 15-25 and, where they are not available, shall select them from the ICSID Panel of arbitrators. If no arbitrators are available on that Panel, the Secretary-General shall make the missing appointments at his discretion. One of the members shall be a national of the disputing Party and the other member of the consolidation tribunal shall be a national of the Party of the disputing investor.

5. Where a consolidation tribunal has been established, a disputing investor that has submitted a claim to arbitration and has not been named in the request for consolidation made pursuant to paragraph 3 may request in writing to the consolidation tribunal to be included in the request and shall specify in that request:

(a) the name and address of the disputing investor and, if applicable, the name or business name and address of the enterprise;

(b) the nature of the requested cumulation agreement; and

(c) the grounds on which the request is based.

6. The cumulation tribunal shall provide, at the expense of the interested investor, a copy of the request for cumulation to the disputing investors against whom the cumulation agreement is sought.

7. A tribunal established under Article 15-21 shall not have jurisdiction to adjudicate a claim, or any part thereof, over which a consolidation tribunal has assumed jurisdiction.

8. On the request of a disputing party, a consolidation tribunal may, pending its decision under paragraph 2, order that the proceedings of a tribunal established under Article 15-21 be suspended pending its decision on the merits of the consolidation.

9. A disputing Party shall deliver to its national section of the Secretariat, within 15 days of the date on which the disputing Party receives

(a) a request for arbitration made pursuant to Article 36(1) of the ICSID Convention;

(b) a notice of arbitration under Article 2 of Part C of the ICSID Additional Facility Rules; or

(c) a notice of arbitration under the terms of the UNCITRAL Arbitration Rules.

10. A disputing Party shall deliver to its national section of the Secretariat a copy of the request made under paragraph 3:

(a) within 15 days of receipt of the request, in the case of a request made by the disputing investor; or

(b) within 15 days of the date of the request, in the case of a request made by the disputing Party.

11. A disputing Party shall deliver to its national section of the Secretariat a copy of the request made under paragraph 6 within 15 days of the date of receipt of the request.

12. The Secretariat shall keep a public record of the documents referred to in paragraphs 9 to 11.

Article 15-28. Notification

The disputing Party shall deliver to the other Party:

(a) written notice of the claim that has been submitted to arbitration no later than 30 days after the date of submission of the claim to arbitration; and

b) copies of all submissions made in the arbitration proceedings.

Article 15-29. Participation by a Party

Upon written notice to the disputing parties, a Party may submit submissions to any tribunal established under this Section on a question of interpretation of this Chapter.

Article 15-30. Documentation

1. A Party shall, at its own expense, be entitled to receive from the disputing Party a copy of:

(a) the evidence offered to any tribunal established pursuant to this Section; and

(b) written submissions made by the disputing Parties.

2. A Party that receives information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 15-31. Place of Arbitration Proceedings

Unless the disputing Parties agree otherwise, any tribunal established under this Section shall conduct the arbitral proceedings in the territory of a Party that is a Party to the New York Convention, which shall be chosen in accordance with:

(a) the ICSID Additional Facility Rules, if the arbitration is governed by those rules or by the ICSID Convention; or

b) the UNCITRAL Arbitration Rules, if the arbitration is governed by those rules.

Article 15-32. Applicable Law.

1. Any tribunal established under this Section shall decide disputes submitted to it in accordance with this Treaty and the applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on any tribunal established under this Section to the extent that such interpretation is applicable to this Chapter.

Article 15-33. Interpretation of Annexes

1. Where a Party asserts as a defense that an allegedly violative measure falls within the scope of a reservation or exception set out in any of the annexes, on request of the disputing Party, any tribunal established under this Section shall request the Commission for an interpretation of that matter. The Commission shall, within 60 days of the delivery of the request, submit its interpretation in writing to that tribunal.

2. The Commission's interpretation submitted under paragraph 1 shall be binding on any tribunal established pursuant to this section. If the Commission does not submit an interpretation within 60 days, that tribunal shall decide the matter.

Article 15-34. Provisional or Precautionary Measures.

A tribunal established under this section may order an interim measure of protection to preserve the rights of the disputing party or to ensure that the tribunal's jurisdiction is given full effect. Such tribunal may not order adherence to the measure alleged to be in violation referred to in Article 15-19 or the suspension of the application of the measure alleged to be in violation referred to in Article 15-19.

Article 15-35. Scope of Award

1. Where a tribunal established under this Section makes an award adverse to a Party, that tribunal may award:

(a) compensation for pecuniary damages and interest thereon; or

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages, plus interest thereon, in lieu of restitution.

2. Where the claim is made by an investor on behalf of an enterprise on the basis of Article 15-19:

(a) the award providing for restitution of property shall provide that restitution shall be awarded to the enterprise;

(b) the award providing for payment of monetary damages and interest thereon shall provide that the sum of money shall be paid to the enterprise; and

(c) the award shall be without prejudice to the rights of any person having a legal interest in the reparation of damages suffered by him, in accordance with the applicable law.

Article 15-36. Finality, Enforceability and Enforcement of the Award

1. The award rendered by any tribunal established under this Section shall be binding only upon the disputing parties and only in respect of the particular case.

2. Subject to paragraph 3 and to the review procedure applicable to an interim award, a disputing party shall comply with and enforce the award without delay.

3. A disputing party may request enforcement of a final award provided that:

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

(i) 120 days have elapsed from the date on which the award was rendered without any disputing party having requested revision or annulment of the award; or

(ii) the revision or annulment proceedings have been completed; and

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

(i) three months have elapsed from the date on which the award was rendered without any disputing party having commenced proceedings to revise, set aside or annul the award; or

(ii) a tribunal has dismissed or granted an application for reconsideration, setting aside or annulment of the award and the decision cannot be appealed.

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

5. Where a disputing Party fails to comply with or abide by a final award, the Commission shall, upon receipt of a request from a Party whose investor was a party to the arbitration proceeding, convene a panel under Chapter XIX (Dispute Settlement). The requesting Party may invoke these procedures to obtain:

(a) a determination that the failure or disregard of the terms of the final award is contrary to the obligations of this Agreement; and

(b) a recommendation that the Party comply with and observe the final award.

6. The disputing investor may seek enforcement of an arbitral award under the ICSID Convention, the New York Convention or the Inter-American Convention, whether or not proceedings under paragraph 5 have been instituted.

7. For the purposes of Article | of the New York Convention and Article | of the Inter-American Convention, a claim submitted to arbitration under this Section shall be deemed to arise out of a commercial relationship or transaction.

Article 15-37. General Provisions

Time at which a claim is deemed to be submitted to arbitration

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

(a) the request for arbitration under Article 36(1) of ICSID has been received by the Secretary-General;

(b) the notice of arbitration pursuant to Article 2 of Part C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration referred to in the UNCITRAL Arbitration Rules has been received by the disputing Party.

Delivery of Documents

2. Delivery of the notice and other documents to a Party shall be made at the place designated by it upon entry into force of this Agreement.

Payments under insurance or guarantee contracts

3. In an arbitration proceeding under this Section, a Party shall not assert as a defense, counterclaim, right of set-off, or otherwise, that the disputing investor received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of the alleged damages for which restitution is sought.

Publication of awards

4. Final awards shall be published only in the event of written agreement between the Parties.

Article 15-38. Exclusions

The dispute settlement provisions of this Section and those of Chapter XIX (Dispute Settlement) do not apply to the cases contained in the Annex to this Article.

Annex 1 to Article 15-07. Reservations and Exceptions

The Parties shall list in this Annex the measures inconsistent with Articles 15-03 to 15-06, in accordance with the provisions of paragraph 1 of Article 15-07.

Annex 2 to Article 15-07. Schedule of Activities. Bolivia

1. Energy and Hydrocarbons.

2. Foundries.

3. Telecommunications (except value added services).

4. Transportation:

(a) maritime transportation.

(b) air transport

(c) rail transport

(d) road transport

(e) transport by pipeline

(f) services auxiliary to the means of transport referred to in subparagraphs (a) to (e)

Annex to Article 15-38. Exclusions of Mexico

Resolutions adopted by the National Commission on Foreign Investment, whether under paragraph 3(c) of Article 15-02, or under the resolution prohibiting or restricting the acquisition of an investment in the territory of the United Mexican States owned or controlled by its nationals, or by one or more investors of the other Party, shall not be subject to the dispute settlement mechanisms provided for in Section B, nor to those of Chapter XIX (Dispute Settlement).

Chapter XVI. Intellectual Property

Section A. General Provisions and Basic Principles

Article 16-01. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

intellectual property rights: all categories of intellectual property that are the object of protection in this Chapter, in the terms indicated;

nationals of the other Party: in respect of the relevant intellectual property right, persons who would meet the eligibility criteria for protection provided by the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1967 (Lisbon Agreement); the International Convention for the

Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (Rome Convention); the Convention Relating to the Distribution of Programme-carrying Signals Transmitted by Satellite, 1974 (Brussels Convention); the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention); the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention); the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and the International Convention for the Protection of New Varieties of Plants, 1978 or 1991 (UPOV Convention); as if each Party were a party to those conventions;

public: for the purposes of copyright and related rights in connection with the rights of communication and performance of the works provided for in Articles 11, 11bis.1 y 14.1.2 of the Berne Convention, with respect to at least dramatic, dramatico-musical, musical, literary, artistic or cinematographic works, includes any group of individuals who are intended and capable of perceiving communications or performances of works, regardless of whether they may do so at the same time and place or at different times and places, provided that such a grouping is larger than a family and its immediate circle of acquaintances or is not a group consisting of a limited number of individuals having the same type of close relationships, which has not been formed for the primary purpose of receiving such performances and communications of works;

encrypted program-carrying satellite signal: that which is transmitted in such a way that the auditory or visual characteristics, or both, are modified or altered to prevent unauthorized reception by persons lacking authorized equipment that is designed to eliminate the effects of such modification or alteration of the program carried in that signal.

Article 16-02. Protection of Intellectual Property Rights.

1. Each Party shall afford in its territory to nationals of the other Party adequate and effective protection and defense of intellectual property rights and shall ensure that measures to defend such rights do not, in turn, become barriers to legitimate trade.

2. Each Party may provide in its law broader protection for intellectual property rights than is required by this Chapter, provided that such protection is not inconsistent with this Chapter.

Article 16-03. Basic Principles.

1. In order to provide adequate and effective protection and enforcement of intellectual property rights, the Parties shall apply, at a minimum, the provisions contained in this Chapter and the substantive provisions of the Lisbon Agreement, the Brussels Convention, the Rome Convention, the Berne Convention, the Geneva Convention and the Paris Convention.

2. Each Party shall make every effort to accede to the conventions referred to in paragraph 1, if it is not already a party to them at the entry into force of this Treaty.

Article 16-04. National Treatment.

1. Each Party shall accord to nationals of the other Party treatment no less favorable than that it accords to its own nationals with respect to the protection and enforcement of all intellectual property rights, subject to the exceptions already provided for in the Rome Convention, the Berne Convention and the Paris Convention.

2. No Party may require holders of intellectual property rights to comply with any formality or condition for acquiring copyright and related rights as a condition for the granting of national treatment under this Article.

Article 16-05. Most Favored Nation Treatment.

With respect to the protection of intellectual property rights, any advantage, favor, privilege or immunity granted by a Party to nationals of any other country shall be accorded immediately and unconditionally to nationals of the other Party. Exempt from this obligation shall be any advantage, favor, privilege or immunity granted by a Party which:

(a) derive from international agreements of a general character on judicial assistance and law enforcement and not limited, in particular, to the protection of intellectual property rights;

(b) are granted in accordance with the provisions of the Berne Convention or the Rome Convention authorizing that the treatment accorded is not a function of national treatment but of the treatment accorded in the other country; and

(c) relate to the rights of performers, producers of phonograms and broadcasting organizations, which are not provided for in this Chapter.

Article 16-06. Exceptions.

Each Party may have recourse to the exceptions set out in Article 16-04, in connection with administrative and judicial procedures for the protection and enforcement of intellectual property rights, including any procedure that requires a national of the other Party to establish a legal domicile or appoint an agent in the territory of that Party, provided that such exception:

(a) is necessary to secure compliance with measures not inconsistent with this Chapter; and

(b) is not applied in such a manner as to constitute a disguised restriction on trade.

Article 16-07. Control of Abusive or Anticompetitive Practices and Conditions.

Nothing in this Chapter shall prevent each Party from providing in its law for licensing practices or conditions that, in particular cases, may constitute an abuse of intellectual property rights with an adverse effect on competition in the relevant market. Each Party may adopt or maintain, in accordance with other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 16-08. Cooperation to Eliminate Trade In Infringing Goods.

The Parties shall cooperate with a view to eliminating trade in infringing goods. To that end, each Party shall

designate a competent office for the purpose of exchanging information relating to trade in such goods.

Article 16-09. Promotion of Innovation and Technology Transfer.

The Parties shall contribute to the promotion of technological innovation and the transfer and dissemination of technology through government regulations favorable to industry and trade that are not contrary to free competition.

Section B. Copyright and Related Rights

Article 16-10. Copyright.

1. Each Party shall protect works covered by Article 2 of the Berne Convention, including any other works embodying an original expression within the meaning of that Convention, such as computer programs or compilations of data which, by reason of their arrangement, selection, selection, arrangement or arrangement of their contents, constitute intellectual

creations. The protection conferred on compilations of data shall not extend to the data or materials themselves, nor shall it be granted to the detriment of any copyright that may exist in such data or materials.

2. Each Party shall grant to authors or their successors in title the rights set forth in the Berne Convention with respect to the works referred to in paragraph 1, including the right to authorize or prohibit:

(a) the importation into their territory of copies of the work made without the authorization of the right holder;

(b) the first public distribution of the original and each copy of the work by sale, rental or any other means;

(c) the communication of the work to the public; and

(d) the rental of the original or a copy of a computer program.

3. Paragraph 2(d) does not apply where the copy of the computer program does not itself constitute an essential object of the rental. Each Party shall provide that the introduction of the original or a copy of the computer program on the market, with the consent of the right holder, does not exhaust the lease right.

4. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding economic rights may freely and separately transfer them by contract for the purpose of exploitation and enjoyment by the transferee; and

(b) any person acquiring and holding such economic rights, by virtue of a contract, including phonogram contracts and employment contracts involving the creation of any kind of work, has the capacity to exercise those rights in his own name and to enjoy fully the benefits derived therefrom.

5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to specific special cases that do not prevent the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party shall grant licenses for reproduction and translation permitted under the Appendix to the Berne Convention, where the legitimate need for copies or translations of the work in the territory of that Party could be met by voluntary actions of the right holder, but for obstacles created by the Party's measures.

7. Copyright is permanent for the life of the author. After his death, those who have legitimately acquired such rights shall enjoy them for a term of at least 50 years. Where the term of protection of a work is calculated on a basis other than the life of a natural person, that term shall be:

(a) not less than 50 years counted from the end of the year of the authorized publication or disclosure of the work; or

b) 50 years from the end of the year of the making of the work, in the absence of its authorized publication or disclosure within a period of 50 years counted from its making.

Article 16-11. Performers.

1. Each Party shall grant performers the right to authorize or prohibit:

(a) the fixation of their unfixed performances and the reproduction of such fixation;

(b) communication to the public, transmission and retransmission by wireless means; and

(c) any other form of use of their performances.

2. Paragraph 1 shall not apply once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation.

Article 16-12. Producers of Phonograms.

1. Each Party shall grant to the producer of a phonogram the right to authorize or prohibit:

(a) the direct or indirect reproduction of the phonogram;

(c) the importation into its territory of copies of the phonogram made without the authorization of the producer;

(d) the first public distribution of the original and each copy of the phonogram by sale, rental or any other means; and

(e) the rental of the original or a copy of the phonogram, except where express provision to the contrary is made in a contract concluded between the producer of the phonogram and the authors of the works fixed in the phonogram.

2. Each Party shall provide that the introduction of the original or a copy of a phonogram on the market, with the consent of the right holder, shall not exhaust the rental right.

3. Each Party shall provide for a term of protection for phonograms of at least 50 years, counted from the end of the year in which the first fixation was made.

4. Each Party shall confine limitations or exceptions to the rights provided for in this Article to specific special cases that do not prevent the normal exploitation of the phonogram and do not unreasonably prejudice the legitimate interests of the right holder.

Article 16-13. Protection of Program-carrying Satellite Signals.

1. Within one year after the entry into force of this Agreement, each Party shall:

(a) shall make it a criminal offense to manufacture, import, sell, lease or otherwise engage in any commercial act to possess a device or system that is of primary assistance in decrypting an encrypted program-carrying satellite signal without authorization from the lawful distributor of that signal; and

(b) shall establish as a cause of civil liability the receipt, in connection with commercial activities, or the further distribution of an encrypted program-carrying satellite signal, which has been received without the authorization of the lawful distributor of the signal, or the engagement in any activity prohibited under subparagraph (a).

2. Each Party shall provide that any person having an interest in the content of that signal may bring an action in respect of any civil wrong established under paragraph 1(b).

Article 16-14. Protection of other Rights.

1. Each Party may grant protection to rights in:

(a) titles or mastheads of newspapers, magazines, motion picture newsreels and, in general, any periodical publication or broadcast;

(b) fictitious or symbolic characters in literary works, graphic cartoons or in any periodical publication, when they have a marked originality and are used habitually or periodically;

(c) human characters of characterization used in artistic performances, artistic names, as well as artistic denominations;

(d) original graphic characteristics, distinctive of the work or collection in its use; and

(e) characteristics of advertising promotions, when they present a marked originality, except for commercial advertisements.

2. The term of protection of the rights referred to in paragraph 1 shall be determined by the legislation of each Party.

Section C. Industrial Property Trademarks

Article 16-15. Protectable Subject Matter.

1. Any sign or combination of signs which distinguishes the goods or services of one person from those of another, including names of persons, designs, letters, numerals, colors, figurative elements, or the shape of goods or their packaging, may constitute a trademark. Marks shall include service marks and collective marks. Each Party may establish as a condition for the registration of trademarks that the signs be visible.

2. The nature of the goods and services to which a trademark is applied shall in no case be an obstacle to its registration.

3. The Parties shall afford interested persons a reasonable opportunity to oppose the registration of a trademark or to request its cancellation.

Article 16-16. Rights Conferred.

The owner of a registered trademark shall have the right to prevent any third party not having the owner's consent from

using in commerce identical or similar signs for goods or services that are identical or similar to those for which the owner's trademark is registered, where such use creates a likelihood of confusion. A likelihood of confusion shall be presumed to exist when an identical or similar sign is used for identical or similar goods or services. The aforementioned rights shall be granted without prejudice to prior existing rights and shall not affect the possibility of each Party to recognize rights on the basis of use.

Article 16-17. Well-known Trademarks.

1. Each Party shall apply Article 6bis of the Paris Convention, with appropriate modifications, to service marks. A trademark shall be understood to be well known in a Party when a particular sector of the public or trade circles of the Party is aware of the trademark as a result of commercial activities carried out in a Party or outside a Party, by a person using that trademark in connection with his goods or services. For the purpose of demonstrating the notoriety of the mark, any means of proof admitted in the Party concerned may be used.

2. No Party shall register as a trademark those signs or figures equal or similar to a well-known trademark, to be applied to any goods or services, in any case in which the use of the trademark by the applicant for its registration could create confusion or a risk of association with the person referred to in paragraph 1, or would constitute an unfair advantage of the prestige of the trademark. This prohibition shall not apply where the applicant for registration is the person referred to in paragraph 1.

3. A person who brings an action for the invalidation of a trademark registration granted in contravention of paragraph 2 shall prove that he has applied, in a Party, for registration of the well-known trademark, the ownership of which he claims.

Article 16-18. Registered Trademarks.

1. Where there are registrations in the Parties of an identical or similar trademark in the name of different owners to distinguish identical or similar goods or services, the marketing of the goods or services identified by that trademark in the territory of the other Party where it is also registered shall be prohibited, unless the owners of such trademarks enter into agreements permitting such marketing.

2. The owners of the trademarks that enter into the agreements referred to in paragraph 1, shall adopt the necessary provisions to avoid the confusion of the public as to the origin of the goods or services in question, including that relating to the identification of the origin of the goods or services in question, with prominent characters and proportional to the same for the due information of the consuming public. Such agreements shall comply with the rules on commercial practices and the promotion of free competition and shall be registered with the competent national offices.

3. In any case, the importation of a good or service that is in the situation described in paragraph 2 shall not be prohibited when the trademark is not being used by its owner in the territory of the importing Party, unless the owner of that trademark presents valid reasons supported by the existence of obstacles to use. Each Party shall recognize as valid reasons for non-use, circumstances beyond the control of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions or other governmental requirements applicable to goods or services identified by the trademark.

4. It shall be understood that a mark is in use when the goods or services that it distinguishes have been placed in commerce or are available in the market under that mark, in the quantity and in the manner that normally corresponds, taking into account the nature of the goods or services and the modalities under which they are marketed in the market.

Article 16-19. Exceptions.

Each Party may provide limited exceptions to the rights conferred by a trademark, such as the correct use of descriptive terms, provided that, in the exceptions, the legitimate interests of the owner of the trademark and of third parties are taken into account.

Article 16-20. Duration of Protection.

The initial registration of a trademark shall have, at least, a duration of ten years counted, in accordance with the legislation of each Party, from the date of the filing of the application or the date of its grant, and may be renewed indefinitely for successive periods of not less than ten years, provided that the conditions for renewal are satisfied.

Article 16-21. Use of the Trademark.

1. Each Party shall require the use of a trademark to maintain the registration. Registration may be cancelled for non-use only after at least a continuous period of non-use of two years has elapsed, unless the owner of the mark demonstrates valid reasons supported by the existence of obstacles to use. Each Party shall recognize as valid reasons for non-use the circumstances referred to in paragraph 3 of Article 16-18.

2. For purposes of maintaining the registration, the use of a mark by a person other than the owner of the mark shall be recognized, when such use is subject to the control of the owner.

Article 16-22. Other Requirements.

The use of a mark shall not be hindered in commerce by special requirements, such as a use that diminishes the function of the mark as an indication of source, or a use with another mark.

Article 16-23. Licensing and Assignment.

Each Party may establish conditions for the licensing and assignment of trademarks, it being understood that compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign it with or without the transfer of the enterprise to which the trademark belongs.

Article 16-24. Franchising.

Each Party shall protect and facilitate the establishment of franchises by allowing the conclusion of contracts that include the license to use a trademark, the transfer of know-how or technical assistance, so that the person to whom such franchise is granted may produce or sell goods or provide services in a uniform manner and with the operational, commercial and administrative methods established by the owner of the trademark, tending to maintain the quality, prestige and image of the goods or services to which it distinguishes.

Geographical indications and appellations of origin

Article 16-25. Protection of Geographical Indications and Appellations of Origin.

1. Each Party shall protect appellations of origin and geographical indications, under the terms of its legislation.

2. Each Party may declare the protection of appellations of origin or, as the case may be, geographical indications, as provided in its legislation, at the request of the competent authorities of the Party where the appellation of origin is protected.

3. Appellations of origin or geographical indications protected in a Party shall not be considered common or generic to distinguish the good, as long as their protection in the country of origin subsists.

4. In relation to appellations of origin and geographical indications, each Party shall establish the legal means for interested persons to prevent:

(a) the use of any means which, in the designation or presentation of the good, indicates or suggests that the good in question comes from a territory, region or locality other than the true place of origin, in such a way as to mislead the public as to the geographical origin of the good; and

(b) any other use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

5. Each Party shall, ex officio if its legislation so permits, or at the request of an interested person, refuse or cancel the registration of a trademark containing or consisting of a geographical indication or appellation of origin in respect of goods that do not originate in the territory, region or locality indicated, if the use of that indication in the trademark for those goods is of such a nature as to mislead the public as to the true place of origin of the goods.

6. Paragraphs 4 and 5 apply to any appellation of origin or geographical indication which, although correctly indicating the territory, region or locality in which the goods originate, gives the public a false idea that the goods originate in another territory, region or locality.

Industrial Designs

Article 16.26. Conditions for Protection.

1. Each Party shall grant protection to new or original industrial designs that are of independent creation. Each Party may provide that designs shall not be considered new or original if they do not differ to a significant degree from known designs or combinations of features of known designs. Each Party may provide that such protection shall not extend to designs based essentially on functional or technical considerations.

2. Each Party shall ensure that the requirements for obtaining industrial design protection, particularly with respect to any cost, examination or publication, do not unreasonably impair the opportunity of a person to apply for and obtain such protection.

Article 16-27. Term of Protection.

Each Party shall grant a period of protection for industrial designs of at least ten years, counted from the date of filing of the application.

Article 16-28. Rights Conferred.

1. The owner of an industrial design shall have the right to prevent third parties not having the owner's consent from making or selling goods bearing or incorporating his design, or from essentially copying the design, where such acts are done for commercial purposes.

2 Each Party may provide for limited exceptions to the protection of industrial designs, provided that such exceptions do not interfere with the normal exploitation of industrial designs in an improper manner, nor unreasonably prejudice the legitimate interests of the owner of the design, taking into account the legitimate interests of third parties.

Patents

Article 16-29. Patentable Subject Matter.

1. Subject to the provisions of paragraphs 2 and 3, patents shall be granted for inventions, whether goods or processes, in such areas of technology as are allowed under the law of each Party, provided that they are new, result from an inventive step and are susceptible of industrial application.

2. Subject to the provisions of paragraph 3, there shall be no discrimination in the granting of patents, nor in the enjoyment of the respective rights, on the basis of the field of technology, the territory of the country in which the invention was made, or whether the goods are imported or locally produced.

3. Each Party may exclude from patentability inventions whose commercial exploitation in its territory must be prevented in order to protect public order or morality, including to protect human, animal or plant life or health, or to avoid serious damage to nature or the environment, provided that such exclusion is not based solely on the fact that the Party prohibits in its territory the commercial exploitation of the subject matter of the patent.

4. In accordance with its legislation, each Party shall grant protection to plant varieties. Each Party shall endeavor, to the extent that its systems are compatible, to comply with the substantive provisions in force of the UPOV Convention.

Article 16-30. Rights Conferred.

A Patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is property, the right to prevent third parties from making, using or selling the subject matter of the patent without his consent; and

(b) where the subject matter of the patent is a process, that of preventing third parties, without his consent, from using the process and from using, selling or importing at least the good obtained directly from that process.

2. Patent owners shall also have the right to assign or transfer by any means the patent and to enter into licensing contracts.

Article 16-31. Exceptions.

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not prevent the normal exploitation of the patent in an undue manner, nor unreasonably prejudice the legitimate interests of third parties.

Article 16-32. Other Uses without Authorization of the Right Holder.

1. Where the law of a Party permits other uses of the subject matter of a patent, other than those permitted under Article 16-31, without the authorization of the right holder, including use by the government or by third parties authorized by the government, the following provisions shall be observed:

(a) the authorization of such uses shall be considered on the merits of the subject matter involved;

(b) such uses may only be permitted where, prior to such uses, the potential user had made efforts to obtain the authorization of the right holder on reasonable commercial terms and conditions and such efforts were unsuccessful within a reasonable period of time. Each Party may waive requirements in cases of national emergency or in circumstances of extreme urgency, or in cases of non-commercial public use. However, in situations of national emergency or in circumstances of extreme urgency, the right holder shall be notified as soon as reasonably possible. In the case of public noncommercial use, where the government or contractor, without conducting a patent search, knows or has a demonstrable basis for knowing that a valid patent is or will be used by or for the government, the right holder shall be promptly informed;

(c) the scope and duration of such uses shall be limited to the purposes for which they have been authorized;

(d) such uses shall not be exclusive;

(e) such uses shall not be assignable, except together with the part of the enterprise that enjoys such uses;

(f) such uses shall be authorized primarily to supply the domestic market of the Party authorizing them;

(g) subject to adequate protection of the legitimate interests of the persons who have received authorization for such uses, their authorization may be revoked, if the circumstances which gave rise to it cease to exist and are unlikely to arise again. The competent authority shall be empowered to review, upon a substantiated request, whether such circumstances continue to exist;

(h) the right holder shall be paid adequate remuneration according to the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision concerning the authorization of such uses shall be subject to judicial review or independent review by a different higher authority;

(j) any determination regarding the remuneration granted for such uses shall be subject to judicial review or independent review by a different higher authority;

(k) no Party shall be obliged to apply the conditions set out in subparagraphs (b) and (f) where such uses are permitted to correct a practice that has been found by judicial or administrative process to be anti- competitive. The competent authority shall have the authority to refuse to revoke the authorization if it appears likely that the conditions that led to the revocation are likely to recur; and

(l) no Party shall authorize the use of the subject matter of a patent to enable the exploitation of another patent, except to correct an infringement that has been sanctioned in an anti-competitive practice proceeding under its law.

Article 16-33. Revocation.

Each Party may revoke a patent only where:

(a) there are grounds that would have justified the refusal to grant it; or.

(b) the grant of a compulsory license has not corrected its non-exploitation.

Article 16-34. Evidence In Cases of Infringement of Patented Processes.

1. Where the subject matter of a patent is a process for obtaining a good, each Party shall provide that, in any infringement proceeding, the defendant shall have the burden of proving that the good that is the subject matter of the alleged infringement was made by a process other than the patented process, where:

(a) the good obtained by the patented process is new; or.

(b) there is a significant likelihood that the allegedly infringing good was made by the patented process and the patentee has not been able, through reasonable efforts, to determine the process actually used.

2. In the collection and assessment of evidence, the legitimate interest of the defendant in the protection of his undisclosed information shall be taken into account.

Article 16-35. Duration of Protection.

Each Party shall provide for a period of protection for patents of at least 20 years, counted from the filing date of the application.

Utility Models

Article 16-36. Protection of Utility Models.

1. Each Party shall protect utility models, understood as objects, utensils, apparatus and tools that, as a result of a modification in their arrangement, configuration, structure or form, present a different function with respect to their component parts or advantages as to their utility.

2. The registration of utility models shall have a non-extendable term of ten years counted from the filing date of the application.

Protection of undisclosed information

Article 16-37. Protection of Industrial and Trade Secrets.

1. Each Party shall protect industrial and trade secrets, understood as those that embody industrial or commercially applicable information which, when kept confidential, enable a person to obtain or maintain a competitive advantage over third parties in the conduct of economic activities.

2. Persons shall have the legal means to prevent industrial and business secrets from being disclosed, acquired or used by third parties without the consent of the person lawfully in control of the information, ina manner contrary to fair trade practices, such as breach of contract, breach of confidence, instigation of infringement and acquisition of undisclosed information by third parties who knew, or grossly negligently failed to know, that the acquisition involved such practices, provided that:

(a) the information is secret, in the sense that, as a whole or in the precise configuration and composition of its elements, it is not generally known or readily accessible to persons within the circles that normally handle the type of information in question;

(b) the information has actual or potential commercial value because it is secret; and

(c) in the circumstances, the person lawfully in control of the information has taken reasonable steps to keep it secret.

3. In order to grant the protection referred to in this Article, each Party shall require that an industrial and trade secret be contained in documents, electronic or magnetic media, optical discs, microfilms, films or other similar instruments.

4. No Party may limit the duration of protection for industrial and trade secrets as long as the conditions described in paragraph 2(a), (b) and (c) exist.

5. No Party shall discourage or prevent the voluntary licensing of trade and business secrets by imposing excessive or discriminatory conditions on such licenses, or conditions that dilute the value of trade and business secrets.

Article 16-38. Data Protection of Pharmochemical or Agrochemical Goods.

1. If, as a condition for approving the marketing of pharmochemical goods or agrochemical goods using new chemical components, a Party requires the submission of unpublished experimental or other data necessary to determine their safety and efficacy, that Party shall protect such data, provided that their generation involves considerable effort, except where the publication of such data is necessary to protect the public or where measures are taken to ensure the protection of the data against unfair commercial use.

2. Each Party shall provide, with respect to data referred to in paragraph 1 that are submitted to it after the entry into force

of this Agreement, that no person other than the person that submitted them may, without the latter's authorization, rely on such data in support of an application for approval of a good for a reasonable period after their submission. For this purpose, a reasonable period shall normally mean a period of not less than five years from the date on which the Party has granted the person who produced the data approval to place its good on the market, taking into account the nature of the data and the efforts and expenses of the person to generate them. Subject to this provision, nothing shall prevent a Party from conducting summary approval procedures for such goods on the basis of bioequivalence or bioavailability studies.

Section D. Enforcement of Intellectual Property Rights

Article 16-39. General Provisions.

1. Each Party shall ensure that its legislation establishes procedures for the enforcement of intellectual property rights in accordance with the provisions of this Article and Articles 16-40 to 16-43, which allow for the adoption of effective measures against any infringing action of the intellectual property rights referred to in this Chapter, including expeditious remedies to prevent infringements and remedies that constitute an effective deterrent to further infringements. These procedures shall be applied in such a way as to avoid the creation of obstacles to legitimate trade and shall provide safeguards against their abuse.

2. Procedures relating to the enforcement of intellectual property rights shall be fair and equitable, and shall not be unnecessarily complicated or burdensome or entail unreasonable time limits or undue delay.

3. Decisions on the merits of a case shall be in writing and shall contain the reasons on which they are based. Such decisions shall be made available at least to the parties to the dispute without undue delay and shall be based only on evidence on which the parties have been given an opportunity to be heard.

4. The parties in dispute shall be given the opportunity for a review by a judicial authority of final administrative decisions and of at least the legal aspects of all first instance judicial decisions on the merits of the case, subject to the jurisdictional provisions of the laws relating to the importance of a case. However, it shall not be mandatory to give them the opportunity to review acquittals rendered in criminal cases.

5. It is understood that this section does not impose any obligation to establish a judicial system for the enforcement of intellectual property rights different from that already existing for the enforcement of legislation in general. Likewise, the enforcement of such rights does not create any obligation with respect to the distribution of resources between the means for the enforcement of intellectual property rights and those for the enforcement of laws in general.

Article 16-40. Specific Procedural Aspects and Remedies In Civil and Administrative Proceedings.

1. Each Party shall make available to right holders civil judicial procedures for the defense of any intellectual property right covered by this Chapter and shall provide that:

(a) defendants are entitled to receive timely notice in writing setting forth in sufficient detail the basis of the claim;

(b) parties to a proceeding are permitted to be represented by independent counsel;

(c) the proceedings do not impose excessive requirements for mandatory personal appearances;

(d) all parties to a proceeding are duly entitled to substantiate their claims and present relevant evidence; and

(e) the procedures include means to identify and protect confidential information.

2. Each Party shall provide that its judicial authorities shall have the authority to:

(a) order that, where a party to a proceeding has presented sufficient evidence to which it reasonably has access as a basis for its claims and has identified any evidence relevant to substantiate its claims that is within the control of the opposing party, the opposing party shall provide such evidence, subject, where appropriate, to conditions that ensure the protection of confidential information;

(b) To issue preliminary and final rulings, of a positive or negative nature, in the event that one of the parties to a proceeding, voluntarily and without valid reason, denies access to evidence or fails to provide relevant evidence under its control within a reasonable period of time or significantly obstructs a proceeding relating to a case involving the defense of intellectual property rights. Such rulings shall be made on the basis of the evidence submitted, including the complaint or pleadings filed by the party adversely affected by the denial of access to evidence, provided that the parties are afforded an

opportunity to be heard on the pleadings or evidence;

(c) Order a party to a proceeding to desist from the alleged infringement until the final resolution of the case, including to prevent imported goods involving the infringement of an intellectual property right from entering the channels of commerce within its jurisdiction. This order shall be implemented at least immediately after the customs clearance of such goods;

(d) order the infringer of an intellectual property right to pay the right holder adequate damages as compensation for the harm the right holder has suffered as a result of the infringement, where the infringer knew that it was engaged in infringing activity or had reasonable grounds to know that it was engaged in infringing activity;

(e) order the infringer of an intellectual property right to cover the right holder's expenses, which may include appropriate attorney's fees; and

(f) order a party to a proceeding, at whose request measures have been taken and who has abused the defense procedures, to provide adequate compensation to any party wrongfully subjected to or restrained in the proceeding for damages suffered as a result of that abuse and to pay the expenses of that party, which may include appropriate attorney's fees.

3. With respect to the authority referred to in paragraph 2(c), no Party shall be obligated to grant such authority with respect to protected subject matter that was acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing with that subject matter would involve the infringement of an intellectual property right.

4. With respect to the authority referred to in paragraph 2(d), each Party may, at least with respect to copyrighted works and phonograms, provide for judicial authorities the authority to order the recovery of profits or the payment of pre-determined damages, or both, even if the infringer did not know that he was engaged in infringing activity or did not have reasonable grounds to know that he was engaged in infringing activity.

5. Each Party shall provide, with a view to effectively deterring infringement, that its judicial authorities shall have the authority to order that:

(a) goods determined by them to infringe intellectual property rights be, without compensation of any kind, removed from the channels of commerce in such a way as to avoid any harm to the right holder, or be destroyed, provided that it is not contrary to the constitutional provisions in force; and

(b) materials and implements that have been predominantly used for the production of infringing goods are, without compensation of any kind, withdrawn from commercial channels in such a way as to minimize the risks of subsequent infringements.

6. In considering the issuance of the orders referred to in paragraph 5, the judicial authorities of each Party shall take into account the need for proportionality between the seriousness of the infringement and the measures ordered, as well as the interests of other persons, including those of the right holder. With respect to counterfeit goods, the simple removal of the unlawfully affixed mark shall not be sufficient to permit the customs clearance of the goods, except in exceptional cases such as those in which the authority provides for their donation to charitable institutions.

7. With respect to the administration of any law relating to the protection or enforcement of intellectual property rights, each Party shall only exempt public authorities and officials from liability for appropriate remedial action where the action was taken or provided for in good faith during the administration of such laws.

8. Without prejudice to the provisions of Articles 16-39 through 16-43, where a Party is sued for infringement of an intellectual property right as a result of the use, by it or on its behalf, of that right, that Party may provide as the sole remedy available against it, the payment of adequate compensation to the right holder, according to the circumstances of the case, taking into consideration the economic value of the use.

9. Each Party shall provide that where relief of a civil nature may be ordered as a result of administrative proceedings on the merits of a case, such proceedings shall conform to principles that are essentially equivalent to those set out in this Article.

Article 16-41. Precautionary Measures.

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures to:

(a) prevent an infringement of any intellectual property right and, in particular, prevent the introduction of goods that are the subject of the alleged infringement into commerce within its jurisdiction, including measures to prevent the entry of

imported goods at least immediately after customs clearance; and

(b) preserve relevant evidence relating to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to order an applicant for precautionary measures to submit any evidence to which it reasonably has access and which those authorities consider necessary to determine with a sufficient degree of certainty whether:

(a) the applicant is the right holder;

(b) the applicant's right is being infringed or such infringement is imminent; and

(c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder or if there is a demonstrable risk that evidence will be destroyed.

3. For the purposes of paragraph 2, each Party shall provide that its judicial authorities shall have the authority to order the applicant to provide a bond or equivalent security sufficient to protect the interests of the respondent and to prevent abuse.

4. Each Party shall provide that its competent authorities shall have the authority to order an applicant for provisional measures to provide any information necessary for the identification of the relevant assets by the authority enforcing the provisional measures.

5. Each Party shall provide that its judicial authorities shall have the power to order provisional measures in which the opposing party is not heard, in particular where there is a likelihood that any delay will cause irreparable harm to the right holder or where there is a demonstrable risk that evidence will be destroyed.

6. Each Party shall provide that where precautionary measures are taken by the judicial authorities of that Party in which the opposing party is not heard:

(a) the person affected is notified of such measures without delay and in no case later than immediately after the execution of the measures; and

(b) the defendant, upon request, obtains judicial review of the measures by the judicial authorities of that Party, for the purpose of deciding, within a reasonable time after notification of those measures, whether they shall be modified, revoked or confirmed.

7. Without prejudice to paragraph 6, each Party shall provide that, at the request of the respondent, the judicial authorities of the Party shall revoke or otherwise terminate precautionary measures taken pursuant to paragraphs 1 through 5, if proceedings leading to a decision on the merits of the case are not initiated

(a) within a reasonable period to be determined by the judicial authority ordering the measures, where the law of that Party so permits; or

(b) in the absence of such determination, within a period of not more than 20 working days or 31 days, whichever is longer.

8. Each Party shall provide that, where the precautionary measures are revoked, where they lapse due to an act or omission of the applicant, or where the judicial authority subsequently determines that there was no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, at the request of the respondent, to provide the respondent with adequate compensation for any damages caused by such measures.

9. Each Party shall provide that, where a precautionary measure may be ordered as a result of administrative procedures, such procedures shall conform to principles that are essentially equivalent to those set out in this Article.

Article 16-42. Criminal Procedures and Penalties.

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful counterfeiting of trademarks or copyrighted copies on a commercial scale. Each Party shall provide that the applicable penalties shall include imprisonment or fines, or both, that are sufficient as a deterrent and consistent with the level of penalties applied to offenses of comparable gravity.

2. Each Party shall provide that its judicial authorities may order the confiscation and destruction of the offending property and of any of the materials and instrumentalities predominantly used in the commission of the offense.

3. For the purposes of paragraph 2, the judicial authorities shall take into account, when considering the issuance of such

orders, the need for proportionality between the seriousness of the infringement and the measures ordered, as well as the interests of other persons including those of the right holder. With respect to counterfeit goods, the simple removal of the unlawfully affixed mark shall not be sufficient to permit the customs clearance of the goods, except in exceptional cases, such as those in which the authority provides for their donation to charitable institutions.

4. Each Party may provide for the application of criminal procedures and penalties in cases of infringement of intellectual property rights other than those referred to in paragraph 1, when committed with intent and on a commercial scale.

Article 16-43. Enforcement of Intellectual Property Rights at the Border.

1. Each Party shall adopt, in accordance with this Article, procedures to enable a right holder who has valid grounds for suspecting that the importation of counterfeit or pirated goods related to trademarks or copyrights may occur, to submit a written request to the competent authorities, whether administrative or judicial, for the customs authority to suspend the free circulation of such goods. No Party shall be obliged to apply such procedures to goods in transit. Each Party may authorize the filing of such a request with respect to goods involving other infringements of intellectual property rights, provided that the requirements of this Article are met. Each Party may also establish similar procedures for the suspension by the customs authorities of customs clearance of goods destined for export from its territory.

2. Each Party shall provide that its competent authorities shall have the authority to direct any applicant initiating a procedure under paragraph 1 to provide adequate evidence to:

(a) for the competent authorities of the importing Party to satisfy themselves that an infringement of intellectual property rights may be presumed under its law; and

(b) to provide a sufficiently detailed description of the goods to make them readily recognizable to the customs authorities.

3. Each Party shall provide that its competent authorities shall communicate to the plaintiff, within a reasonable period of time, whether they have accepted the application and, where those competent authorities so provide, the time limit for action by the customs authorities.

4. Each Party shall provide that its competent authorities shall have the authority to order an applicant under paragraph 1 to provide a bond or equivalent security sufficient to protect the respondent and the competent authorities and to prevent abuse. Such bond or equivalent security shall not unduly deter the applicant from resorting to such procedures.

5. Each Party shall provide that the owner, importer or consignee of goods involving industrial designs, patents or industrial and trade secrets shall have the right to obtain customs clearance thereof upon the posting of a security in an amount sufficient to protect the right holder against any infringement, provided that:

(a) as a result of an application made in accordance with the procedures of this Article, the customs authorities have suspended the release for free circulation of such goods, on the basis of a decision not issued by a judicial or other independent authority;

(b) the time limit stipulated in paragraphs 8, 9, 10 and 11 has expired without the competent authority having issued a provisional suspension measure; and

(c) the other conditions for importation have been complied with.

6. The payment of the security referred to in paragraph 5 shall be without prejudice to any other remedy available to the right holder, and shall be returned if the right holder does not exercise his action within a reasonable period of time.

7. Each Party shall provide that its competent authority shall promptly notify the importer and the applicant of the suspension of customs clearance of the goods referred to in paragraph 1.

8. Each Party shall provide that its customs authority shall proceed with the customs clearance of the goods provided that all other conditions for the importation or exportation of the goods have been met, if within a period not exceeding ten working days after the applicant has been notified by notice of the suspension, the customs authorities have not been informed that:

(a) a party other than the respondent has initiated proceedings leading to the obtaining of a decision on the merits of the case; or

(b) the competent authority empowered for that purpose has taken provisional measures prolonging the suspension of the release of the goods.

9. For the purposes of paragraph 8, each Party shall provide that its customs authorities shall have the authority to extend, where appropriate, the suspension of the release of the goods for a further ten working days.

10. If proceedings leading to a decision on the merits of the case have been initiated, a review shall, at the request of the respondent, take place within a reasonable period of time. Such review shall include the right of the respondent to be heard, with a view to deciding whether such measures should be modified, revoked or confirmed.

11. Notwithstanding the provisions of paragraphs 8, 9 and 10, where the suspension of customs clearance is effected or continued pursuant to a provisional judicial measure, the provisions of paragraph 7 of article 16- 41 shall apply.

12. Each Party shall provide that its competent authorities shall have the authority to order the applicant, in accordance with paragraph 1, to pay the importer, consignee and owner of the goods adequate compensation for any damage suffered by them as a result of the wrongful detention of the goods or the detention of goods that have been released in accordance with paragraphs 8 and 9.

13. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to grant:

(a) sufficient opportunity to the right holder to have any goods detained by the customs authorities inspected for the purpose of substantiating its claim; and

(b) an equivalent opportunity to the importer to have such goods inspected.

14. Where the competent authorities have given a favorable decision on the merits of the case, each Party may empower those authorities to provide the right holder with the names and addresses of the consignor, the importer and the consignee, as well as the quantity of the goods in question.

15. Where a Party requires its competent authorities to act on their own initiative and suspend customs clearance of goods in respect of which they have prima facie evidence of infringement of an intellectual property right:

(a) the competent authorities may at any time request from the right holder any information that may assist them in the exercise of that power;

(b) the importer and the right holder shall be promptly notified of the suspension by the competent authorities of the Party. Where the importer has requested a review of the suspension before the competent authorities, such suspension shall be subject, with appropriate modifications, to the provisions of paragraphs 8, 9, 10 and 11; and

(c) the Party shall exempt only public authorities and officials from liability for appropriate remedial action for acts performed or disposed of in good faith.

16. Without prejudice to other remedies available to the right holder and subject to the right of the defendant to seek review before a judicial authority, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in paragraphs 5 and 6 of Article 16-40. With respect to counterfeit goods, the authorities shall not, except in exceptional circumstances, allow them to be re-exported in the same state or subject them to a different customs procedure.

17. Each Party may exclude from the application of paragraphs 1 through 16, small quantities of goods that are not of a commercial nature and are part of the personal baggage of travelers or are sent in small, non- repeated consignments.

18. Each Party shall use its best efforts to comply as soon as possible with the obligations set out in this Article, and shall do so within a period not exceeding three years from the date of entry into force of this Agreement.

Chapter XVII. Transparency

Article 17-01. Information Center.

1. Each Party shall designate a unit or office as an information center to facilitate communication between the Parties on any matter covered by this Agreement.

2. When a Party so requests, the information center of the other Party shall indicate the unit or official responsible for the matter and provide the support required to facilitate communication with the requesting Party.

Article 17-02. Publication.

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application that relate to any matter covered by this Agreement are promptly published or made available for the information of the Parties and any interested party.

2. To the extent practicable, each Party shall:

(a) publish in advance any measure it proposes to adopt; and

(b) provide reasonable opportunity for persons and the other Party to comment on the proposed measures.

Article 17-03. Notification and Provision of Information.

1. Each Party shall, to the extent possible, notify the Party with an interest in the matter of any proposed or existing measure that the Party considers may substantially affect or would substantially affect the interests of that other Party under this Agreement.

2. Each Party shall, upon request of the Party concerned, provide information and promptly respond to its questions regarding any existing or proposed measure, notwithstanding that the Party concerned has been previously notified of that measure.

3. The notification or provision of information referred to in this Article shall be without prejudice to whether or not the measure is consistent with this Agreement.

Article 17-04. Guarantees of Hearing, Legality and Due Process of Law.

1. The Parties reaffirm the guarantees of hearing, legality and due process of law enshrined in their respective legislation.

2. Each Party shall maintain tribunals and judicial or administrative procedures for the review and, where appropriate, correction of final acts related to this Agreement.

3. Each Party shall ensure that in judicial and administrative proceedings relating to the application of any measure affecting the operation of this Agreement, the essential procedural formalities are complied with and the legal cause of action is established and substantiated.

Chapter XVIII. Administration of the Treaty

Article 18-01. Administrative Commission.

1. The Parties establish the Administrative Commission, composed of the officials referred to in Annex 1 to this article or by the persons designated by them.

2. The Commission shall have the following functions:

(a) to ensure compliance with and the correct application of the provisions of this Agreement;

(b) to evaluate the results achieved in the implementation of this Agreement and to monitor its development;

(c) to resolve disputes arising with respect to its interpretation or application;

(d) supervise the work of all working groups established under this Agreement and included in Annex 2 to this Article; and

(e) to consider any other matter that may affect the operation of this Agreement, or any other matter entrusted to it by the Parties.

3. The Commission may:

(a) establish and delegate responsibilities to ad hoc or permanent working groups and expert groups;

(b) seek the advice of individuals or groups with no governmental connection; and

(c) if agreed by the Parties, take any other action for the exercise of its functions.

4. The Commission shall establish its rules and procedures and all its decisions shall be taken unanimously.

5. The Commission shall meet at least once a year. The meetings shall be chaired successively by each Party.

Article 18-02. The Secretariat.

1. The Commission shall establish and supervise a Secretariat composed of national sections. 2. Each Party shall:

(a) establish the permanent office of its national section;

(b) shall be responsible for:

(i) the operation and costs of its section; and

(ii) the remuneration and expenses payable to arbitrators and experts appointed pursuant to this Agreement, as provided in the Annex to this Article;

(c) designate the Secretary of its national section, who shall be the officer responsible for its administration; and

(d) notify the Commission of the address of its national section.

3. The Secretariat shall have the following functions:

(a) to provide assistance to the Commission;

(b) to provide administrative support to the arbitral tribunals;

(c) on instructions from the Commission, to support the work of the working groups established under this Treaty; and

(d) such other functions as may be entrusted to it by the Commission.

Annex 1 to Article 18-01. Officers of the Administrative Commission

The officials referred to in article 18-01 are:

(a) for the case of Bolivia, the Minister of Foreign Affairs and Worship or his successor; and.

(b) in the case of Mexico, the Secretary of Commerce and Industrial Development or his successor.

Annex 1 to Article 18-02. Working groups

Working Groups

- Working Group on Agricultural Technical and Marketing Standards (article 4-07) - Working Group on Agricultural Trade (article 4-08)

- Working Group on Animal Health and Phytosanitary Measures (article 4-20)

- Working Group on Rules of Origin (article 5-18)

- Working Group on Customs Procedures (article 6-11)

- Working Group on Temporary Entry (article 11-06)

- Working Group on Financial Services (article 12-11)

- Working Group on Standardization Measures (article 13-17)

- Working Group on Micro, Small and Medium-Sized Industry (article 14-21)

Sub-Working Groups

- Sub-Working Group on Standardization Measures on Labeling, Packaging, Packing and Consumer Information (article 13-17)

- Sub-Working Group on Standardization Measures in the Field of Health (article 13-17)

- Sub-Working Group on Telecommunications (Article 13-17)

Annex to Article 18-02. Remuneration and payment of expenses

1. The Commission shall fix the amounts of remuneration and expenses to be paid to arbitrators and experts.

2. The remuneration of the arbitrators, experts and their assistants, their transportation and accommodation expenses, and all general expenses of the arbitral tribunals shall be covered in equal portions by the Parties.

3. Each arbitrator and expert shall keep a record and render a final account of his time and expenses, and the arbitral tribunal shall keep a similar record and render a final account of all general expenses.

Chapter XIX. Settlement of Disputes

Article 19-01. Cooperation.

The Parties shall always endeavor to reach agreement on the interpretation and application of this Agreement through cooperation and consultations, and shall endeavor to reach a mutually satisfactory solution to any matter that may affect its operation.

Article 19-02. Scope of Application.

Except as otherwise provided in this Agreement, the procedure of this Chapter shall apply:

(a) to the prevention or settlement of all disputes between the Parties relating to the application or interpretation of this Agreement; and

(b) where a Party considers that an existing or proposed measure of another Party is inconsistent with the obligations of this Agreement or would cause nullification or impairment within the meaning of the Annex to this Article.

Article 19-03. Dispute Settlement Under the GATT.

1. Disputes arising under the provisions of this Agreement, the GATT, and the agreements negotiated thereunder, may be settled in either forum at the option of the complaining Party.

2. Once a dispute settlement proceeding has been initiated under Article 19-05 or under the GATT, the forum selected shall be exclusive of any other forum.

3. For purposes of this Article, dispute settlement proceedings under the GATT shall be deemed to have been initiated when a Party requests:

(a) the establishment of a panel in accordance with Article XXIII:2 of the GATT 1947; or

(b) an investigation by a committee, as would be the case under Article 20.1 of the Customs Valuation Code.

Article 19-04. Consultations.

1. Any Party may request in writing consultations with respect to a measure adopted or proposed, or with respect to any other matter that it considers may affect the application of this Agreement.

2. The Party initiating consultations pursuant to paragraph 1 shall deliver the request to its national section of the Secretariat and to the other Party.

3. The Parties shall:

(a) provide such information as may permit consideration of how the adopted or proposed measure, or any other matter, could affect the operation of this Agreement; and

(b) treat confidential information exchanged in the course of consultations in the same manner as the Party that provided it.

Article 19-05. Intervention by the Commission, Good Offices, Conciliation and Mediation.

1. Any Party may request in writing that the Commission be convened if a matter is not resolved pursuant to Article 19-04 within 45 days after delivery of the request for consultations.

2. A Party may also request in writing that the Commission be convened when consultations have been held pursuant to paragraph 5 of Article 4-21 (Technical Consultations) and paragraph 4 of Article 13-19 (Technical Consultations).

3. The Party initiating the procedure shall mention in the request the measure or other matter that is the subject of the complaint, indicate the provisions of this Agreement that it considers applicable and deliver the request to its national section of the Secretariat and to the other Party.

4. The Commission shall meet within 10 days of delivery of the request and, with a view to reaching a mutually satisfactory resolution of the dispute, may:

(a) convene technical advisors or establish such working or expert groups as it deems necessary;

(b) resort to good offices, conciliation, mediation or other dispute settlement procedures; or

(c) make recommendations.

Article 19-06. Request for the Integration of the Arbitral Tribunal.

1. Where the Commission has met pursuant to paragraph 4 of Article 19-05 and the matter has not been resolved within 45 days after the meeting, any Party may request in writing the establishment of an arbitral tribunal. The requesting Party shall deliver the request to its national section of the Secretariat and to the other Party.

2. Upon delivery of the request, the Commission shall establish an arbitral tribunal.

3. Unless otherwise agreed by the Parties, the arbitral tribunal shall be constituted and perform its functions in accordance with the provisions of this Chapter.

Article 19-07. List of Arbitrators.

1. The Commission shall draw up a list of up to 20 arbitrators who are qualified and willing to serve as arbitrators.

2. The members of the list shall:

(a) have expertise or experience in law, international trade, other matters related to this Agreement, or in the settlement of disputes arising out of international trade agreements;

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

(c) be independent of, not bound by, and not receive instructions from, the Parties; and

(d) comply with the code of conduct established by the Commission.

Article 19-08. Qualifications of Arbitrators.

1. All arbitrators shall meet the qualifications stipulated in paragraph 2 of Article 19-07.

2. Individuals who have been involved in a dispute, in terms of paragraph 4 of article 19-05, may not be arbitrators for the same dispute.

Article 19-09. Constitution of the Arbitral Tribunal.

1. The arbitral tribunal shall be composed of five members.

2. The Parties shall endeavor to appoint the chairman of the arbitral tribunal within 15 days of the delivery of the request for the constitution of the arbitral tribunal. If the Parties fail to reach agreement within this period, one of them, chosen by lot, shall designate the chairman within 5 days. The individual designated as chairman of the arbitral tribunal may not be of the nationality of the appointing Party.

3. Within 15 days of the election of the chairman, each Party shall select from the list two arbitrators who are nationals of the other Party.

4. If a Party fails to select an arbitrator within that period, the arbitrator shall be selected by lot from among the members of the roster who are nationals of the other Party.

5. Within 15 days after the proposal is made, any Party may file a challenge, without stating a reason, against any individual not on the list who is proposed by a Party as an arbitrator.

6. Where a Party considers that an arbitrator has committed a violation of the code of conduct, the Parties shall consult and, if agreed, remove that arbitrator and select a new arbitrator in accordance with the provisions of this Article.

Article 19-10. Model Rules of Procedure.

1. The Commission shall establish model rules of procedure, in accordance with the following principles:

(a) the procedures shall guarantee the right to a hearing before the arbitral tribunal, as well as the opportunity to present written pleadings and rebuttals; and

(b) the hearings before the arbitral tribunal, the deliberations and the preliminary decision, as well as all written submissions and communications with the arbitral tribunal, shall be confidential.

2. Unless otherwise agreed by the Parties, the proceedings before the arbitral tribunal shall be governed by the Model Rules of Procedure.

3. The mission of the arbitral tribunal, contained in the Terms of Reference, shall be:

"To examine, in the light of the applicable provisions of this Treaty, the matter submitted to the Commission under the terms of the request for the meeting of the Commission and to issue the decisions referred to in Article 19-12, paragraph 2, and Article 19-13."

4. If the complaining Party alleges that a matter has caused nullification or impairment of benefits, the mission report shall so state.

5. Where a Party requests that the arbitral tribunal make findings on the extent of the adverse trade effects on any Party of the measure found to be inconsistent with this Agreement or to have caused nullification or impairment within the meaning of the Annex to Article 19-02, the Terms of Reference shall so state.

Article 19-11. Role of Experts.

At the request of a Party or on its own motion, the arbitral tribunal may seek information and technical advice from such persons or groups as it deems appropriate.

Article 19-12. Preliminary Decision.

1. The arbitral tribunal shall base its preliminary decision on the arguments and submissions made by the Parties and on any information it has received pursuant to Article 19-11.

2. Unless otherwise agreed by the Parties, within 90 days after the appointment of the last arbitrator, the arbitral tribunal shall submit to the Parties a preliminary decision containing:

(a) findings of fact, including any arising from a request pursuant to paragraph 5 of Article 19-10;

(b) a determination as to whether the measure at issue is or may be inconsistent with the obligations under this Agreement, or is a cause for nullification or impairment within the meaning of the Annex to Article 19-02; and

(c) the draft decision.

3. The arbitrators may formulate individual opinions on matters on which there is no unanimous decision.

4. The Parties may submit written comments to the arbitral tribunal on the preliminary decision within 14 days of its submission.

5. In such a case and after considering the written observations, the arbitral tribunal may, on its own motion or at the request of any Party:

(a) take any steps it considers appropriate; and

(b) reconsider its preliminary decision.

Article 19-13. Final Decision.

1. The arbitral tribunal shall submit to the Commission a final decision and, where appropriate, individual opinions on the issues on which there has been no unanimous decision, within 30 days of the submission of the preliminary decision.

2. Neither the preliminary decision nor the final decision shall disclose the identity of the arbitrators who voted with the majority or with the minority.

3. The final decision of the arbitral tribunal shall be published 15 days after its communication to the Commission.

Article 19-14. Compliance with the Final Decision.

1. The final decision of the arbitral tribunal shall be binding on the Parties. The Parties shall comply with the final decision of the arbitral tribunal in the terms and within the time limits ordered by the arbitral tribunal.

2. Where the final decision of the arbitral tribunal declares that the measure is incompatible with this Agreement, the Party complained against shall, whenever possible, refrain from implementing the measure or repeal it.

3. Where the decision of the arbitral tribunal finds that the measure is a cause for nullification or impairment within the meaning of the Annex to Article 19-02, it shall determine the level of nullification or impairment and may suggest adjustments mutually satisfactory to the Parties.

Article 19-15. Non-compliance - Suspension of Benefits.

1. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against if the arbitral tribunal determines:

(a) that a measure is inconsistent with the obligations under this Agreement and the Party complained against fails to comply with the final decision within the period of time fixed by the arbitral tribunal; or

(b) that a measure is a ground for nullification or impairment within the meaning of the Annex to Article 19-02 and the Parties fail to reach a mutually satisfactory settlement of the dispute within the period of time fixed by the arbitral tribunal.

2. The suspension of benefits shall last until the Party complained against complies with the final decision of the arbitral tribunal or until the Parties reach a mutually satisfactory settlement of the dispute, as the case may be.

3. In considering the benefits to be suspended pursuant to paragraph 1, the Party shall actually:

(a) shall first seek to suspend benefits within the same sector or sectors that are affected by the measure, or by another matter that the arbitral tribunal has found to be inconsistent with the obligations under this Agreement, or to have been a cause of nullification or impairment within the meaning of the Annex to Article 19-02; and

(b) may suspend benefits in other sectors when it considers that it is not practicable or effective to suspend benefits in the same sector or sectors.

4. At the written request of any Party, notified to the other Party and its national section of the Secretariat, the Commission shall establish an arbitral tribunal to determine whether the level of benefits suspended by the complaining Party pursuant to paragraph 1 is manifestly excessive.

5. The proceedings before the arbitral tribunal constituted for the purposes of paragraph 4 shall be conducted in accordance with the model rules of procedure. The arbitral tribunal shall render its final decision within 60 days after the last arbitrator has been chosen, or within such other period of time as the Parties may agree.

Article 19-16. Interpretation of the Treaty Before Domestic Judicial and Administrative Bodies.

1. Where a question of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party and the other Party considers that it warrants its intervention, or where a judicial or administrative body of a Party requests the opinion of the other Party, the Party in whose territory that body is located shall notify the other Party and its national section of the Secretariat. The Commission shall endeavor, as soon as possible, to agree on an appropriate response.

2. The Party in whose territory the judicial or administrative body is located shall submit to them any interpretation agreed upon by the Commission, in accordance with the procedures of that body.

3. Where the Commission is unable to reach agreement, either Party may submit its own opinion to the judicial or administrative body, in accordance with the procedures of that body.

Article 19-17. Alternative Means of Dispute Settlement.

1. To the extent possible, each Party shall promote and facilitate recourse to arbitration and other alternative means for the settlement of international commercial disputes between private parties.

2. To this end, each Party shall have appropriate procedures to ensure the observance of arbitration agreements and the recognition and enforcement of arbitral awards rendered in such disputes.

3. The Commission may establish an Advisory Working Group on Private Commercial Disputes, composed of persons with expertise or experience in the settlement of private international commercial disputes. The Working Group shall submit reports and recommendations of a general nature to the Commission on the existence, use and effectiveness of arbitration and other procedures for the settlement of such disputes.

Annex to Article 19-02. Nullification and Impairment

1. A Party may have recourse to the dispute settlement mechanism of this Chapter where, by virtue of the application of a measure that does not contravene the Agreement, it considers that the benefits it could reasonably have expected to accrue from the application are nullified or impaired:

(a) of Part Two (Trade in Goods);

(b) Chapter IX (General Principles on Trade in Services);

(c) Chapter XIII (Standardization Measures);

(d) Chapter XIV (Government Procurement); or

(e) Chapter XVI (Intellectual Property).

2. With respect to measures subject to an exception under Article 20-01 (General Exceptions), a Party may not invoke:

(a) paragraph 1(a) to the extent that the benefit derives from any provision relating to cross-border trade in services of Part Two (Trade in Goods);

(b) paragraph 1(b);

(c) paragraph 1(c) to the extent that the benefit derives from any provision relating to cross-border trade in services in Chapter XIII (Standardization Measures);

(d) paragraph 1(d); or

(e) paragraph 1(e).

Chapter XX. Exceptions

Article 20-01. General Exceptions.

1. Article XX of the GATT and Its interpretative notes are hereby incorporated into and made an integral part of this Agreement for purposes of:

(a) Part Two (Trade in Goods), except to the extent that any of its provisions apply to services or investment; and.

(b) Part Four (Technical Barriers to Trade), except to the extent that any provision thereof applies to services.

2. Nothing in Part Two (Trade in Goods), Part Four (Technical Barriers to Trade), and Chapters IX (General Principles on Trade in Services) and X (Telecommunications) shall be construed to prevent any Party from adopting or enforcing measures necessary to:

(a) protect public morals or maintain public order;

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

(c) to secure compliance with laws and regulations not inconsistent with the provisions of this Treaty, including those relating to:

(i) the prevention of deceptive and fraudulent practices or the means of dealing with the effects of non- performance of service contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of the confidentiality of individual records and accounts; and

(iii) security;

provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on trade between the Parties.

Article 20-02. National Security.

1. In addition to the provisions of Article 14-18 (Exceptions), nothing in this Agreement shall be construed to:

(a) compel a Party to provide or give access to information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent a Party from taking any measure that it considers necessary to protect its essential security interests:

(i) relating to trade in armaments, munitions and war materiel and to trade and transactions in goods, materials, services and technology carried out for the direct or indirect purpose of providing supplies to a military institution or other defense establishment;

(ii) adopted in time of war or other emergencies in international relations;

(iii) relating to the implementation of national policies or international agreements relating to the non- proliferation of nuclear weapons or other nuclear explosive devices; or

c) to prevent any Party from taking measures in accordance with its obligations under the United Nations Charter for the Maintenance of International Peace and Security.

Article 20-03. Exceptions to Disclosure of Information.

Nothing in this Treaty shall be construed to require a Party to furnish or give access to information the disclosure of which would impede compliance with or be contrary to its Constitution or laws regarding, inter alia, the protection of privacy of individuals, financial affairs and bank accounts of individual customers of financial institutions.

Chapter XXI. Final Provisions

Article 21-01. Annexes.

The annexes to this Agreement constitute an integral part of the same.

Article 21-02. Amendments.

1. The Parties may agree on any modification or addition to this Agreement.

2. The agreed modifications and additions shall enter into force once they are approved according to the corresponding legal procedures of each Party and shall constitute an integral part of this Agreement.

Article 21-03. Convergence.

The Parties shall promote the convergence of this Treaty with other integration agreements of Latin American countries, in accordance with the mechanisms established in the Treaty of Montevideo 1980.

Article 21-04. Entry Into Force.

This Treaty shall enter into force on January 1, 1995, once the communications certifying that the necessary legal formalities have been completed have been exchanged.

Article 21-05. Reservations.

This Treaty may not be the subject of reservations or interpretative declarations at the time of its ratification.

Article 21-06. Accession.

1. Any country or group of countries may accede to this Treaty subject to such terms and conditions as may be agreed between that country or group of countries and the Commission, and once its accession has been approved in accordance with the applicable legal procedures of each country.

2. This Agreement shall not be in force between a Party and any acceding country or group of countries if at the time of accession any one of them does not consent.

3. Accession shall enter into force upon the exchange of communications certifying that the legal formalities have been completed.

Article 21-07. Denunciation.

1. Any Party may denounce this Agreement. The denunciation shall take effect 180 days after communicating it to the other Party, without prejudice that the Parties may agree on a different term.

2. In the case of the accession of a country or group of countries as established in Article 21-06, notwithstanding that a Party has denounced the Treaty, the Treaty shall remain in force for the other Parties.

Article 21-08. Evaluation of the Treaty.

The Parties shall periodically evaluate the development of this Treaty in order to seek its improvement and consolidate the integration process in the region, promoting an active participation of the productive sectors.