Free Trade Agreement between the United Mexican States, the Republic of Colombia and the Republic of Venezuela

The governments of the Republic of Venezuela, the United Mexican States and the Republic of Colombia,

WHEREAS:

The status of their countries as Contracting Parties to the General Agreement on Tariffs and Trade (GATT) and the commitments arising therefrom for them.

The status of their countries as members of the Latin American Integration Association (ALADI) and the commitments derived therefrom for them, as well as the will to strengthen said Association as a center of convergence of Latin American integration.

Colombia's and Venezuela's status as members of the Cartagena Agreement and the commitments arising therefrom for them

The coincidence in the policies of internationalization and modernization of their countries' economies, as well as their decision to contribute to the expansion of world trade.

The priority of deepening economic relations between their countries and the decision to promote the Latin American integration process.

DECIDED TO:

Strengthen the special ties of friendship, solidarity and cooperation between their peoples.

To contribute to harmonious development, the expansion of world trade and the broadening of international cooperation.

Create an expanded and secure market for goods and services produced in their territories. Reduce trade distortions.

Establish clear and mutually beneficial rules for their commercial exchange.

Ensure a predictable business framework for planning productive activities and investment. Strengthen the competitiveness of its companies in world markets.

Encourage innovation and creativity by protecting intellectual property rights.

Create new employment opportunities, improve working conditions and living standards in their respective territories.

Preserve its ability to safeguard the public welfare.

Promote sustainable development.

Promote the coordinated action of the Parties in international economic forums, particularly those related to Latin American integration processes.

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.

THE FREE TRADE AGREEMENT:

Pursuant to the GATT and as a Partial Scope Economic Complementation Agreement in accordance with the provisions 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) to 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) to promote conditions of fair competition in trade between the Parties; d) substantially increase investment opportunities in the territories of the Parties; e) protect and enforce intellectual property rights;

f) to establish guidelines for further cooperation among the Parties, as well as at the regional and multilateral levels, aimed at extending and enhancing the benefits of this Agreement;

(g) to establish effective procedures for the implementation and enforcement of this Agreement, for its joint administration and for the settlement of disputes;

h) to promote equitable relations between the Parties, recognizing differential treatment based on the categories of countries established in LAIA;

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 International Treaties.

1. The Parties confirm the rights and obligations existing between them under the GATT, the Treaty of Montevideo 1980 and other international treaties and agreements ratified by them.

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

Article 1-03. Relations between Colombia and Venezuela.

1. Chapters III, IV, V section A, VI, VIII, IX, XVI and XVIII shall not apply between Colombia and Venezuela.

2. The chapters not covered in paragraph 1 shall apply between Colombia and Venezuela, without prejudice to the obligations arising from the legal system of the Cartagena Agreement.

3. Paragraphs 1 and 2 do not affect any rights Mexico may have under this Agreement.

Article 1-04. Compliance with the Treaty.

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

Article 1-05. Succession of Treaties.

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

Chapter II. General Definitions

Article 2-01. Definitions of General Application

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

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.

Customs Valuation Code: the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes.

Commission: the Administrative Commission established in accordance with Article 20-01. communication: official written communication or notification. days: continuous, calendar or calendar days.

enterprise: any entity constituted or organized under applicable law, whether or not for profit and whether privately or governmentally owned, including corporations, foundations, companies, branches, trusts, participations, sole proprietorships, joint ventures or other partnerships. Nothing in this Agreement shall be construed to require a Party to grant or recognize legal personality to entities that do not have legal personality under the laws of that Party.

State enterprise: an enterprise that is owned or controlled by a Party through equity participation. existing: existing on the date of entry into force of this Treaty.

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

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

b) any antidumping or countervailing duty or countervailing duty imposed in accordance with the laws of a Party;

c) any duties or other charges related to the importation, proportionate to the cost of the services rendered; and

d) any premium offered or collected on imported goods, derived from any bidding system, with respect to the administration of quantitative import restrictions or tariff-rate quotas or tariff preference quotas. measure: any law, regulation, procedure, administrative provision or practice, among others, adopted by a Party.

national: a natural person who has the nationality of a Party in accordance with 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.

originating: that complies with the rules of origin established in Chapter VI.

Party: any State with respect to which this Treaty 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. person: a natural or natural person, or a company.

Tax Relief Program: the one established in Annex 1 to Article 3-04.

Protocol: a protocol annexed to this Treaty, the provisions of which have the same hierarchy and binding force as those of this Treaty.

resolution: decision or resolution of an authority.

Harmonized System: the Harmonized Commodity Description and Coding System, including the General Rules of Classification and their explanatory notes.

Chapter III. National Treatment and Market Access for Goods

Section A. Definitions

Article 3-01. Definitions.

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

F.O.B.: free on board (L.A.B.).

Tariff item: a Harmonized System tariff classification code at the eight- or ten-digit level.

samples without commercial value: goods representative of a class of goods already produced or of a model of goods the production of which is planned. It does not include identical goods imported by the same person or shipped to a single

consignee in such quantity that, taken as a whole, they constitute an ordinary import subject to import duties.

used: those goods that at the time of importation show signs of wear and tear or tarnishing due to use; those that, even without having been used, have been manufactured for a considerable period of time; and leftovers, imperfect goods, second-hand goods and scrap.

Section B. Scope of Application and National Treatment

Article 3-02. Scope of Application.

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

Article 3-03. National Treatment.

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

2. The provisions of paragraph 1 mean, with respect to a state or department, or a municipality, treatment no less favorable than the most favorable treatment accorded by that state or department, or municipality to any like goods, direct competitors or substitutes, as the case may be, of the Party of which it is a member.

3. Paragraphs 1 and 2 do not apply to the measures set forth in the annex to this article.

Section C. Import Taxes

Article 3-04. Import Tax Exemption.

1. Except as otherwise provided in this Agreement, no Party may increase any existing import tax, or adopt any new import tax, on originating goods.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its import taxes on originating goods as set out in Annex 1 to this Article.

3. Paragraphs 1 and 2 of this article are not intended:

(a) prohibit a Party from increasing an import tax on originating goods to a level no higher than that set out in the Schedule, where that Party had previously reduced that import tax unilaterally to a level lower than that set out in the Schedule;

(b) prevent a Party from increasing an import duty on originating goods when such increase is authorized as a result of a GATT dispute settlement proceeding between those Parties.

(c) prevent a Party from creating a new tariff split or split, provided that the import duty applicable to the originating goods concerned is not higher than that applicable to the tariff code split or split.

4. Unless otherwise provided, this Agreement incorporates the tariff preferences previously negotiated between the Parties, the regional tariff preference (RTP) for the tariff universe and the extension of the RTP between Mexico and Venezuela, as reflected in Annex 1 to this Article. As of the entry into force of this Agreement, the preferences previously negotiated or granted between the Parties within the framework of the ALADI are no longer in effect.

5. For purposes of import tax relief in accordance with this Article, the transitional rates or tariff rates shall be approximated downward to at least the nearest tenth of a percent or, if the rate of duty is expressed in units of currency, to at least the nearest .001 of the Party's official currency unit.

6. In addition to the provisions of Annex 2 to this Article, at the request of any Party, the Commission shall consult to examine the possibility of accelerating the relief of import taxes on one or more goods or of including one or more goods in the Schedule and shall make appropriate recommendations to the Parties. Once the relevant legal requirements have been met, the accelerated relief from import taxes on a good that is achieved for two or more Parties shall prevail over any import tax or relief period for that good between those Parties. The inclusion of goods in the Duty Relief Program that is achieved between two or more Parties will become effective for those goods between those Parties once the corresponding legal procedures are fulfilled.

Article 3-05. Customs Valuation.

1. Except as provided in the annex to this article, the customs value of an imported good shall be determined in accordance with the principles of the Customs Valuation Code.

2. The taxable base on which import taxes shall be applied to goods imported from another Party shall not be the value of a good produced in the territory of the importing Party, nor an arbitrary or fictitious value. Pursuant to Article 13 of the Customs Valuation Code, if in the course of determining the customs value of imported goods it becomes necessary to delay the final determination of that value, the importer may remove the goods from customs if, when required to do so, he provides sufficient security in the form of a bond or, if the importer so chooses, by such other means of security as the Party's legislation may provide. The guarantee shall cover the payment of any taxes to which the goods may ultimately be subject.

3. Each Party shall establish the appropriate documentation to prove that the customs value is correct, which shall not be greater than that which may reasonably be required to comply with the provisions of Article VII of the GATT.

4. The guarantee granted under the terms of paragraph 3 shall be released within a term not to exceed twenty working days from the date on which the importer delivers the appropriate documentation to the customs authority, unless the customs authority has initiated the exercise of its verification or verification powers.

5. Each Party may determine, in accordance with paragraph 3, the goods imported from another Party that shall be subject to the aforementioned guarantee when the customs value declared by the importer is lower than the estimated price determined by the customs authority of the importing Party based on previously obtained and analyzed transaction value histories.

6. Before adopting the estimated price referred to in paragraph 6, the Party shall communicate to the other Parties the description of the good, its tariff item, the estimated price it proposes to establish and the reasons on which it relies to adopt the measure.

7. The Parties understand that the estimated price referred to in paragraph 6 shall not be considered as the base price for the determination of import taxes.

Article 3-06. Temporary Importation of Goods.

1. Each Party shall authorize the temporary importation free of import duties or with suspension of the payment thereof, at least to the goods listed below, which are imported from another Party, regardless of their origin and regardless of whether similar goods, direct competitors or substitutes are available in the territory of the importing Party:

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

b) press equipment or equipment for on-air transmission of radio or television signals and cinematographic equipment;

c) goods imported for sporting purposes or for exhibition or demonstration purposes including components, ancillary apparatus and accessories; and

d) commercial samples and advertising films.

2. Except as otherwise provided in this Agreement, each Party may subject the temporary importation of a good referred to in paragraph 1(a), (b) or (c), free of import duty or with suspension of import duty, to any of the following conditions, and no additional conditions may be adopted:

a) that are introduced by natural or juridical persons legally established in the Party, or by nationals of another Party;

b) that the property is used exclusively by the person who enters temporarily or under his personal supervision, in the performance of his activity, trade or profession;

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

d) that the temporary importation is secured by a bond or other guarantee not exceeding 110% of the charges that would be caused by the definitive importation of the good, to be released at the time of re-exportation;

e) that the good is susceptible to identification upon re-export;

f) that the good is re-exported upon departure of the person or within a period that reasonably corresponds to the purpose

of the temporary importation, which in no case may exceed six months, extendable to nine months;

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 form in which it was imported.

3. Except as otherwise provided in this Agreement, the Parties may subject the temporary importation of a good referred to in paragraph 1(d) to any of the following conditions free of import duties or with suspension of the payment thereof, without the possibility of adopting additional conditions:

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

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

c) that the good is susceptible to identification upon re-export;

d) that the good is re-exported within a period that reasonably corresponds to the purpose of the temporary importation, which in no case may exceed six months, which may be extended to nine months; and

e) that the good is imported in amounts not greater than reasonable in accordance with its intended use.

4. Where a good that is temporarily imported free of import duty under paragraph 1 fails to meet any of the conditions that a Party imposes under paragraphs 2 and 3, that Party may require payment of import duties and any other charges that would be incurred on the final importation of the good.

Article 3-07. Importation of Samples with No Commercial Value.

Each Party shall authorize the importation free of import duty of samples of no commercial value originating in another Party.

Article 3-08. Temporary Flexibility Levels for Certain Goods Classified In Chapters 51 to 63 of the Harmonized System

Until December 31, 1999, the Parties listed in the Annex to this Article shall grant to goods classified in Chapters 51 through 63 of the Harmonized System that comply with the provisions of Article 6-19, the preferential treatment for originating goods provided for in the Duty-Free Program, in accordance with the provisions of that Annex.

Section D. Non-Tariff Measures

Article 3-09. Import and Export Restrictions.

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except 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 anti-dumping and countervailing duties or countervailing duty undertakings and penalties.

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

a) limit or prohibit the importation of the goods of the non-Party from the territory of another Party; or

b) require as a condition for the exportation of the goods to the territory of another Party that the goods are not re-exported directly or indirectly to the non-Party 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. Inthe 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 minimizing undue interference with or distortion of pricing, marketing and distribution mechanisms in another Party.

5. Paragraphs 1 to 4 shall not apply to the measures set forth in the annex to this article.

Article 3-10. Customs Duties.

No Party shall increase or establish any customs duties for the service rendered by customs on originating goods and shall eliminate such duties on originating goods within five and a half years of the entry into force of this Agreement.

Article 3-11. 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 another Party, unless such tax, levy or charge is adopted or maintained on the exportation of that good to the territory of all other Parties, and on that good, when destined for domestic consumption.

2. Each Party may maintain or adopt a tax, levy or charge on the export of the staple goods listed in Annex 1 to this Article, their ingredients, or the goods from which such foodstuffs are derived, if such tax, levy or charge is adopted or maintained for the export of such goods to the territory of all other Parties, and is used:

(a) for the benefits of a domestic food assistance program that includes such food to be received only by consumers in the Party implementing that program; or

(b) to ensure the availability of sufficient quantities of the foodstuff for domestic consumption, or of sufficient quantities of its ingredients or of the goods from which such foodstuffs are derived for a domestic processing industry, when the domestic price of such foodstuff 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 such domestic industry, and are sustained only for the period necessary to maintain the integrity of such program.

3. Notwithstanding paragraph 1, each Party may adopt or maintain a tax, levy or charge on the export of any foodstuff to the territory of another 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 agreed by all Parties.

4. Paragraph 1 shall not apply to the measures set forth in Annex 2 to this article.

Article 3-12. Country of Origin Marking.

The annex to this article shall apply to measures related to country of origin marking. Section E - Publication and communication

Article 3-13. Publication and Communication.

1. No Party shall apply prior to its official publication any measure of a general nature that has the effect of increasing an import tax or other charge on the importation of goods from another Party or the exportation of goods destined for another Party, or that imposes a new or more burdensome measure, restriction or prohibition on such imports or exports or on transfers of funds relating thereto.

2. At the request of a Party, another Party shall identify in terms of the tariff items and nomenclature corresponding to them under the Harmonized System, the measures, restrictions or prohibitions on the importation or exportation of goods for reasons of national security, public health, preservation of flora or fauna, the environment, phytosanitary and zoosanitary standards, technical standards, labeling, international commitments, public order requirements or any other regulation.

Chapter IV. Automotive Sector

Article 4-01. Definitions.

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

model year: the period from November 1 of one year to October 31 of the following year.

integral buses: vehicles without chassis (frame) and with integrated bodywork, intended for the transport of more than 16 persons, including the driver, and which are classified in heading 8702 (self-supporting buses).

automotive goods: goods classified in annexes 1 and 2 to article 4-02.

trucks and tractor-trailers of more than 15 tons gross vehicle weight: vehicles with a chassis (frame) for the transport of goods, with a gross vehicle weight of 15,000 kilograms or more and which are classified in subheading 8701.20 or in heading 8704.

gross vehicle weight: the actual weight of the vehicle expressed in kilograms, plus its maximum load capacity according to the manufacturer's specifications and its full fuel tank.

used motor vehicle: one vehicle:

a) sold, leased or lent;

b) managed by more than:

i) 200 kilometers, in the case of vehicles with a gross vehicle weight of less than five tons;

ii) 2,000 kilometers, in the case of vehicles with a gross vehicle weight equal to or greater than five tons; or

c) manufactured prior to the current model year and that at least sixty days have elapsed since the date of manufacture.

Article 4-02. Scope of Application.

1. The provisions of this chapter apply only to automotive goods that are classified under the tariff codes specified in Annex 1 to this article and to automotive goods that are classified under the tariff codes specified in Annex 2 to this article, provided that the latter are used in the automotive goods referred to in Annex 1 to this article.

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

Article 4-03. Automotive Sector Committee.

1. The Parties establish the Automotive Sector Committee, composed of representatives of the Parties. The Committee shall be advised by representatives of the private sector.

2. It shall be the responsibility of the Committee:

a) submit to the Commission at the end of the first year following the entry into force of this Treaty, a proposal on:

i) a compensated exchange mechanism to promote trade in this sector;

ii) a methodology for the definition of the origin of automotive goods, taking into account the criteria of change of tariff classification or regional content value, as well as their percentage;

iii) any modification to the scope of application of this chapter; and

iv) any acceleration in the reduction of import duties on automotive goods, taking into account the differences in the degree of development of the automotive industries located in the territory of each Party.

b) to analyze the evolution of trade in the automotive sector and to propose to the Commission the mechanisms that will lead to a better development of this sector;

c) to analyze the automotive industry policies applied by each Party and make the pertinent recommendations to the Commission in order to achieve the elimination of barriers to trade and greater economic complementation in this sector; and

d) to ensure compliance with the provisions of this chapter and to make such recommendations as it deems pertinent to the Commission.

Article 4-04. Elimination of Import Taxes.

1. Each Party shall eliminate its import duties on trucks and tractor-trailers over 15 tons gross vehicle weight and on integral buses originating in a Party in accordance with the following:

(a) may maintain the prime rates or tariff rates set forth in Annex 1 to Article 3-04 for a period of two years following the

entry into force of this Agreement; and

(b) eliminate them in eleven equal annual reductions beginning January 1, 1997, to be completely eliminated as of January 1, 2007.

2. Each Party shall eliminate its import duties on automotive goods originating in the other Parties not covered in paragraph 1, no earlier than January 1, 1997, in accordance with the following:

(a) if the Commission reaches agreement on the provisions of Article 4-03, paragraph 2(a)(i) and (ii), the Parties shall eliminate the prime rates or tariff rates set out in Annex 1 to Article 3- 04 in equal annual stages beginning on a date to be determined by the Commission, so that such prime rates or tariff rates are completely eliminated on January 1, 2007; or

(b) if the Commission does not reach agreement on the provisions of Article 4-03, paragraph 2(a)(i) and (ii), the Parties may maintain the prime rates or tariff rates set out in Annex 1 to Article 3-04, but shall eliminate them completely on January 1, 2007, unless the Parties agree to a longer period.

Article 4-05. Rules of Origin.

Notwithstanding the provisions of the Annex to Article 6-03 and Article 6-19, for the goods referred to in Annexes 1 and 2 to Article 4-02, the rules of origin established in Resolution 78 of the ALADI Committee of Representatives shall apply, as long as the Parties do not agree on different rules of origin for the aforementioned goods, in accordance with the provisions of Article 4-03, paragraph 2, subparagraph a), numeral ii).

Article 4-06. Performance Requirements.

1. Notwithstanding the provisions of Articles 3-03 and 17-04, the Parties may maintain or modify the performance requirements for the automotive industry.

2. Notwithstanding the provisions of Article 3-09, the Parties may adopt or maintain import permit measures to administer the requirements referred to in paragraph 1.

3. The Parties shall eliminate the measures referred to in paragraph 2 no later than January 1, 2007.

Article 4-07. Used Automotive Goods.

The Parties may adopt or maintain prohibitions or restrictions on the importation of used motor vehicles and other used, rebuilt or reconditioned automotive goods. Such goods are excluded from the Duty-Free Program.

Article 4-08. Extension of the PAR.

In the event that a Party grants PAR to a non-Party, it shall extend it to the other Parties under the same access conditions.

Chapter V. Agricultural Sector and Phytosanitary and Zoosanitary Measures

Section A. Agricultural Sector

Article 5-01. Definitions.

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

tariff-quota: that which is established by applying a certain rate or tariff rate to imports of a good up to a certain quantity (in-quota quantity) and a higher rate to imports of that good in excess of that quantity (over-quota).

sugar:

a) for imports into Mexico, the goods included in the following tariff items of the Tariff of the Mexican General Import Tax Law: 1701.11.01, 1701.11.99, 1701.12.01, 1701.12.99, 1701.91 (except those containing flavorings), 1701.99.01 and 1701.99.99;

b) for imports into Colombia and Venezuela, the goods included in the following tariff items of their respective Customs

Tariff: 1701.11.10, 1701.11.90, 1701.12.00, 1701.91.00 and 1701.99.00. Agricultural good: good included in any of the following chapters, headings or subheadings of the Harmonized

System:

(a) Chapters 1 to 24, except fish and fish products; and

b) goods covered by the following headings or subheadings. The corresponding descriptions are provided for reference purposes only.

item or subheading / description

2905.43 mannitol

2905.44 sorbitol

33.01 essential oils

35.01 to 35.05 albuminoidal substances, starch products or modified starch

3809.10 Finishing agents and finishing products

3823.60 sorbitol n.o.s.

41.01 to 41.03 hides, skins and leather

43.01 raw furskins

44.01 to 44.07 wood

50.01 to 50.03 raw silk and silk waste

51.01 to 51.03 wool and fur

52.01 to 52.03 unginned cotton, cotton waste and cotton waste backcombing or combing

53.01 raw flax

53.02 raw hemp

53.03 to 53.05 jute, sisal, coconut and abaca fibers

fish and fish products: fish or crustaceans, mollusks or any other aquatic invertebrates, marine mammals and their derivatives, included in any of the following chapters, headings or subheadings of the Harmonized System: Descriptions are provided for reference purposes only.

chapter, description / heading or subheading

03 fish and crustaceans, mollusks and other invertebrates aquatic

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

05.08 coral and similar products

05.09 natural sponges of animal origin

05.11 products of fish or crustaceans, mollusks, or any other invertebrate marine; the dead animals of chapter 3

15.04 fats and oils and their fractions, of fish or mammalian origin seafarers

16.03 non-meat extracts and juices

16.04 prepared or preserved fish

16.05 prepared or preserved crustaceans or mollusks and other marine invertebrates

2301.20 flours, meals, pellets, fish pellets

export subsidy:

a) the granting, by a government or public agency, to an industry, to producers of an agricultural good, to a cooperative or other association of such producers, to a marketing board or to any other type of enterprise, of direct subsidies, including payments in kind, contingent upon export performance;

b) the sale or placement for export, by a government or public agency, of non-commercial stocks of agricultural sector goods at a price lower than the comparable price charged for a similar good to buyers in the domestic market;

c) payments for the export of agricultural sector goods financed by virtue of governmental action, whether or not such payments involve a charge on the public budget, including those financed out of revenue from a levy imposed on the agricultural sector good in question or on the agricultural sector good from which the exported good is obtained;

d) the provision of subsidies to reduce the costs of marketing exports of agricultural goods, except for generally available export promotion and advisory services, including handling costs, and international transportation and freight costs;

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

f) subsidies on agricultural sector goods subject to their incorporation into exported goods.

Article 5-02. Scope of Application.

1. This section applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

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

Article 5-03. Intergovernmental Agreements.

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

Article 5-04. Access to Markets.

1. The Parties shall facilitate access to their respective markets by reducing or eliminating import and export barriers to reciprocal trade in agricultural goods, such as: import restrictions, import taxes, and agricultural technical and marketing standards.

2. The Parties renounce the use of quantitative import restrictions, price bands or price stabilization mechanisms and variable tariffs for the goods included in the Duty-Free Program in their reciprocal trade, without prejudice to the provisions of Annex 1 to this Article.

3. The Parties exempt from the Duty-Free Program the goods of the agricultural sector in accordance with Annex 2 to this Article.

4. Once a year after the entry into force of this Agreement, the Committee on Agricultural Trade established in Article 5-10 shall review the possibility of incorporating the agricultural sector goods contained in Annex 2 to this Article into the Duty-Free Program and shall make the pertinent recommendations to the Parties. This incorporation may be carried out in accordance with the methodologies described in Annex 1 to this Article.

5. Trade in the goods included in Annexes 3 and 4 to this article shall be governed by the provisions thereof.

Article 5-05. Special Safeguards.

1. Mexico and Venezuela may, in accordance with their Schedule to the Schedule to the Schedule, maintain or adopt a special safeguard in the form of a tariff rate quota on an agricultural good listed in their Section of the Annex to this Article. Notwithstanding Article 3-04, a Party may not apply an over- quota tariff rate or rate of duty under a special safeguard that exceeds the lesser of the following:

(a) the most-favored-nation rate or tariff in effect at the time of entry into force of this Agreement; and

b) the most favored nation rate or tariff prevailing at that time.

2. With respect to the same agricultural good and the same Party, no Party may simultaneously apply an over-quota tariff rate or tariff rate under paragraph 1 and take a safeguard measure under Chapter VIII.

Article 5-06. Refund of Import Taxes on Products Exported Under Identical or Similar Conditions.

From the date of entry into force of this Agreement, no Party may refund the amount of import taxes paid, or exempt or reduce the amount of import taxes due, on any agricultural good imported into its territory that is:

(a) replaced by an identical or similar good of the agricultural sector of that Party subsequently exported to the territory of another Party;

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

Article 5-07. Internal Support Measures.

1. The Parties recognize the existence of domestic support measures for the agricultural sector and that such measures may distort trade and affect production. They further recognize that commitments on reduction of domestic support may arise in the multilateral agricultural negotiations under the GATT.

Therefore, when a Party decides to support its agricultural producers, it will endeavor to move towards domestic support policies that:

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

b) are exempt from any commitment to reduce domestic support that may be negotiated under the GATT.

2. Any Party may modify its domestic support measures, including those that may be subject to reduction commitments, in accordance with its rights and obligations under the GATT.

Article 5-08. Export Subsidies.

1. The Parties share the objective of achieving the multilateral elimination of export subsidies on agricultural goods and will cooperate in the effort to reach agreements within the framework of the GATT.

2. The Parties shall gradually eliminate export subsidies for agricultural sector goods incorporated into the Duty-Free Program in the following manner:

a) upon the incorporation of an agricultural good into the Tax Relief Program, the Parties may maintain the export subsidy prevailing in the year prior to its incorporation for up to three years;

b) as from the fourth year after the agricultural sector good has been incorporated into the relief program, the corresponding export subsidies will be eliminated in equal stages until reaching zero at the end of the relief of that good.

3. Once the relief has been completed, neither Party may maintain or introduce export subsidies on agricultural goods in its reciprocal trade. Likewise, the Parties waive their rights under the GATT to use export subsidies on agricultural goods in their reciprocal trade, as well as any rights with respect to the use of such subsidies that may result from multilateral negotiations on agricultural matters within the framework of the GATT.

4. Notwithstanding the provisions of paragraphs 2 and 3, a Party may, if so requested by another Party and there is agreement between them, adopt or maintain an export subsidy on an agricultural good exported to that other Party.

Article 5-09. Technical and Agricultural Marketing Standards.

1. The Parties establish a Working Group on Agricultural Technical and Marketing Standards composed of representatives of each Party, which shall meet annually or as otherwise agreed. The Working Group shall review the application and effects of technical or marketing standards for agricultural goods affecting trade between the Parties, and recommend possible solutions to issues that may arise in connection therewith. The Working Group shall report to the Committee on Agricultural Trade after each meeting.

2. Each Party shall accord to goods imported from another Party treatment no less favorable than that accorded to its goods

in the application of technical or marketing standards to goods of the agricultural sector with respect to packaging, grades, quality and size of goods.

Article 5-10. Agricultural Trade Committee.

1. The Parties establish a Committee on Agricultural Trade, composed of representatives of each Party.
2. It shall be the responsibility of the Committee:

a) monitoring and promoting cooperation in the implementation and administration of this chapter;

b) the establishment of a forum for the Parties to consult on matters related to this chapter; c) the submission of an annual report to the Commission on the implementation of this section.

3. The Committee shall meet at least once a year and when so agreed.

Section B. Phytosanitary and Zoosanitary Measures

Article 5-11. Definitions.

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

animal: among others, domestic animals, fish and wildlife;

good: animals, vegetables, their products and by-products.

contaminant: among others, pesticide and veterinary drug residues and other foreign substances. disease: the more or less serious alteration of the animal body.

risk assessment: an evaluation of:

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

b) the likelihood of adverse effects on human and animal life or health arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food or feed.

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

phytosanitary or animal health measure: a measure, including a criterion relating to the final good; a process or production method directly related to the good; 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 for:

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

b) to protect human and animal life and health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in food or feed;

c) to protect human life and health within its territory from the risks arising from a disease-causing organism or a pest carried by an animal or plant or a derivative thereof; or

d) prevent or limit other damage in its territory resulting from the introduction, establishment and spread of a pest or disease.

appropriate level of phytosanitary or animal health protection: the level of protection deemed appropriate by the Party establishing the phytosanitary or animal health measure to protect human, animal or plant life or health in its territory.

international standard, guideline or recommendation: a standard, guideline or recommendation, in relation to:

a) food safety, that established by the Codex Alimentarius Commission, including that related to product decomposition, elaborated by the Codex Alimentarius Committee on Fish and Fishery Products, food additives, contaminants, hygienic practices and methods of analysis and sampling;

b) animal health and zoonoses, that prepared under the auspices of the Office International des Epizooties;

c) plant health, that developed under the auspices of the Secretariat of the International Plant Protection Convention; and

d) as established by other international organizations agreed upon by the Parties or developed pursuant to such organizations.

pest: among others, any living stage of any insect, mite, nematode, slug, snail, protozoan, or other invertebrate animal, bacteria, fungi, other parasitic plants or reproductive parts thereof, virus, mycoplasma, weed or any similar organism or the same associated with any of the above or any infectious substance that may directly or indirectly cause damage to plants or animals or their products or by-products.

approval procedure: any registration procedure, communication or any other mandatory administrative procedure.

control or inspection procedure: any procedure used, directly or indirectly, to determine compliance with a phytosanitary or zoosanitary measure, including sampling, testing, inspection, evaluation, assessment, verification, monitoring, auditing, evaluation of the application of phytosanitary and zoosanitary measures, accreditation, registration, certification, other procedures involving physical examination of a good, its packaging, or equipment or facilities directly related to the production, marketing or use of the good. Approval procedures are excluded from this definition.

transport: among others, the means of mobilization, the form of packaging and the mode of transport. plant: among other crops of economic, scientific, medicinal, ornamental and wild flora interest.

area: 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 5-12. Scope of Application.

1. In order to establish a framework of disciplines and rules to guide the development, adoption and enforcement of phytosanitary and zoosanitary measures, the provisions of this Section apply to any such measure, which when adopted by a Party directly or indirectly, may affect trade between the Parties.

2. This section applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

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

Article 5-13. Right to Adopt Phytosanitary and Zoosanitary Measures.

Each Party may, in accordance with this Section, adopt, apply or maintain any phytosanitary or zoosanitary measure necessary for the protection of human, animal and plant life and health in its territory. The measure may be stricter than an international standard, guideline or recommendation.

Article 5-14. Right to Set the Level of Protection.

Notwithstanding any other provision of this section, each Party may, in order to protect human, animal and plant life and health, set its appropriate levels of protection, in accordance with the provisions of Article 5-22.

Article 5-15. Scientific Principles.

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

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

b) is not maintained when there is no longer a scientific basis to support it; and

c) is based on a risk assessment appropriate to the circumstances that motivated it.

Article 5-16. Non-discriminatory Treatment.

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

Article 5-17. Unnecessary Obstacles.

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

Article 5-18. Covert Restrictions.

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

Article 5-19. Action by Non-governmental Organizations.

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

Article 5-20. International Standards and International Standardization Organizations.

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

2. A Party's phytosanitary or animal health measure that is the same as an international standard, guideline or recommendation shall be considered consistent with Articles 5-13 through 5-19. A measure of a Party that provides a different level of phytosanitary or animal health protection than that which would be achieved by a measure based on an international standard, guideline or recommendation is not, on that basis alone, considered inconsistent with the provisions of this Section.

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

4. Where a Party has reason to believe that a phytosanitary or animal health measure of another 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 inform it in writing within forty days.

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 5-21. Equivalence.

1. Without reducing the level of protection of human, animal and plant life and health, the Parties shall, to the greatest extent possible and in accordance with this section, seek equivalence of their respective phytosanitary and zoosanitary measures.

2. The importing party:

(a) treat a phytosanitary or animal health measure adopted, applied or maintained by an exporting Party as equivalent to its own when the exporting Party, in cooperation with the importing Party, provides it with scientific or other information, in accordance with risk assessment methods agreed by the Parties, to demonstrate objectively, in accordance with 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 achieve the level of protection that the importing Party considers adequate; and

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

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

4. The Parties may consider, when developing a phytosanitary or animal health measure, the relevant existing or proposed phytosanitary or animal health measures of the Parties.

Article 5-22. Risk Assessment and Adequate Level of Protection.

1. Each Party shall take into account, when carrying out a risk assessment:

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

b) relevant scientific information;

c) relevant production, processing, handling and packaging methods;

d) appropriate inspection, sampling and testing methods;

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

f) ecological and other environmental conditions to be considered; and

g) the applicable quarantine measures and treatments that satisfy the importing Party such as quarantine, chemical, physical, destruction, re-shipment and others accepted by the Parties.

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

a) loss of production or sales that could be a consequence of the pest or disease; b) costs of control or eradication of the pest or disease in its territory; and c) the cost-effectiveness of other options for limiting risks. 3. Each Party, in establishing its appropriate level of protection: a) shall take into account the objective of minimizing negative effects on trade; and

b) avoid, with the objective of achieving consistency in the practical application of the concept of adequate level of protection, making arbitrary or unjustifiable distinctions, under different circumstances, that may result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.

4. Notwithstanding paragraphs 1 through 3 and Article 5-15(c), where in conducting a risk assessment a Party concludes that the available relevant scientific or other information is insufficient to complete the assessment, it may adopt a provisional phytosanitary or animal health measure, based on available relevant information, such as information from international standardizing organizations and the phytosanitary or animal health measures of other Parties. The Party shall complete the evaluation within sixty days of the submission of sufficient information to complete the evaluation, review the provisional measure and, where appropriate, modify it.

An importing Party may achieve its appropriate level of protection through the application of phytosanitary and zoosanitary measures immediately or gradually. When the application of the latter modality is requested by a Party, the other Party may grant such application or make specific exceptions, taking into account the export interests of the requesting Party.

Article 5-23. Adaptation to Regional Conditions.

1. Each Party shall adapt any of its phytosanitary or animal health measures related to the introduction, establishment or spread of an animal or plant pest or disease to the phytosanitary or animal health characteristics of the area where a good subject to such measure is produced and to the area in its territory for which the good is destined, taking into account relevant conditions, including those relating to transport and handling of cargo between such areas. In assessing such characteristics of an area, taking into account whether it is a pest-free or disease-free area and can be maintained as such, or is an area of low pest or disease prevalence, 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 the area; and

(c) any relevant standards, guidelines or recommendations.

2. In addition to the provisions of paragraph 1, each Party, when establishing whether an area is a pest-free or disease-free area or 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 phytosanitary or zoosanitary controls in that area.

3. Each importing Party shall recognize that an area in the territory of the exporting Party is, and may be maintained as, a pest-free or disease-free area or an area of low pest or disease prevalence, when the exporting Party provides the importing Party with sufficient scientific or other information to demonstrate this to the satisfaction of the importing Party. To this end, each exporting Party shall, upon request, allow the importing Party access to its territory for inspection, testing and other relevant procedures.

4. Each Party, taking into account any relevant conditions, including those related to the transportation and handling of the cargo, may, in accordance with this section:

a) adopting, applying or maintaining a different risk assessment procedure for a pest-free or disease-free area than for an area of low pest or disease prevalence; and

b) make a different determination for the disposition of a good produced in a pest-free or disease-free area than for one produced in an area of low pest or disease prevalence.

5. In adopting, applying or maintaining a phytosanitary or animal health measure in relation to the introduction, establishment or spread of an animal or plant pest or disease, each Party shall accord to a good obtained in a pest-free or disease-free area in the territory of another Party treatment no less favorable than that accorded to a good obtained 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 transport and cargo.

6. Each importing Party shall seek agreement with the exporting Party, upon request, on specific requirements that would allow a good obtained in an area of low pest or disease prevalence in the territory of an exporting Party to be imported into the territory of the importing Party.

Article 5-24. Control, Inspection and Approval Procedures.

1. Each Party, in connection with any control or inspection procedure it carries out:

a) initiate and conclude the proceeding 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 whoever requests it, the expected duration of the procedure;

c) ensure that the competent body:

i) upon receipt of an application, promptly examine the completeness of the documentation and inform the applicant accurately and fully of any deficiencies;

ii) as soon as possible, transmit to the applicant the results of the procedure in an accurate and complete manner, so that the applicant may take any necessary corrective action;

iii) where the application is insufficient, continue, to the extent 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 confidential or proprietary information arising out of or in connection with the conduct of the proceeding for an asset of the other Party:

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

ii) in any case, treatment that protects the legitimate commercial interests of the applicant to the extent provided by the law of that Party;

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

g) for carrying out the procedure, shall not impose a fee that is greater for a good of another Party than is equitable in relation to any fee it charges on its goods or the goods of any other 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 procedure is to be carried out, so as not to cause inconvenience to an applicant or its representative;

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

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

2. When a phytosanitary or zoosanitary measure of the importing Party requires a control or inspection procedure to be carried out at the production stage, the exporting Party shall, at the request of the importing Party, take the measures available to it to facilitate access to its territory and provide the necessary assistance to facilitate the importing Party in carrying out its control or inspection procedure.

3. The Parties shall apply, with the necessary modifications, with respect to their approval procedures, the relevant provisions of paragraph 1, subparagraphs a) to h).

4. Animporting Party that maintains an approval procedure may require that its authorization for the use of an additive, or the establishment of a tolerance level for a contaminant in a food or feedstuff, be obtained in accordance with that procedure before granting access to its domestic market for a food or feedstuff containing that additive or contaminant. Where that Party so requires, it may authorize a relevant international standard, guideline or recommendation as a basis for granting access to such goods pending completion of the procedure.

Article 5-25. Communication, Publication and Provision of Information.

1. When proposing the adoption or modification of a phytosanitary or zoosanitary measure of general application in their respective territories, each Party:

a) at least 60 days in advance, publish notice and communicate to the other Parties of its intention to adopt or modify such measure, where it is not a law, and publish and provide to the other Parties the full text of the proposed measure, in a manner that will enable interested parties to become familiar with the proposal;

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

c) provide a copy of the proposed measure to any Party or interested party 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 other Parties and interested persons to make comments in writing and, upon request, discuss them and take into account the results of such discussions.

2. Through appropriate measures, each Party shall seek to ensure, with respect to any phytosanitary or zoosanitary measure of a competent authority of a state or department, or of a municipality of that Party:

a) that notice and communication of the type required in paragraph 1(a) and (b) is given at an appropriate early stage, prior to adoption; and

b) that the provisions of paragraph 1, subparagraphs c) and d) are observed.

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

a) immediately notify the other Parties, in accordance with the requirements set forth in paragraph 1, subparagraph b), including a brief description of the emergency;

b) deliver a copy of the measure to any of the Parties or interested parties that so request; and

c) allow, without discrimination, the other Parties and interested parties to make comments in writing and, upon request, discuss them and take into account the results of such discussions.

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

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

6. When an importing Party denies entry into its territory of a good of another Party because it does not comply with a phytosanitary or animal 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 5-26. Information Centers.

1. Each Party shall ensure that there is at least one information center capable of answering all reasonable questions from other Parties and stakeholders, as well as providing relevant documentation regarding:

a) any phytosanitary or zoosanitary measure of general application, including any control or inspection or approval procedure proposed, adopted or maintained in its territory;

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

c) the Party's membership and participation in international and regional phytosanitary and animal health bodies and systems, and bilateral and multilateral agreements within the scope of this Section, and the provisions of such bodies, systems, or agreements; and

d) the location of notices published pursuant to this section, or where such information may be obtained.

2. Each Party shall ensure that, in accordance with the provisions of this Section, when copies of documents are requested by another Party or an interested party, they shall be provided at a price not higher than the price at which they are sold domestically, plus the cost of postage.

Article 5-27. Technical Cooperation.

1. Each Party shall, at the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to strengthen phytosanitary and animal health measures and related activities of that other Party, including research, process technologies, 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 that will facilitate the Party's adjustment and compliance with a Party's phytosanitary or animal health measure.

2. Each Party, at the request of another Party:

a) provide that Party with information on its technical cooperation programs concerning phytosanitary or zoosanitary measures in areas of particular interest; and

b) may consult with that Party during the development of any phytosanitary or animal health measure, or prior to the adoption of that measure or a change in its application.

Article 5-28. 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 would impede the enforcement of its laws, would be contrary to the public interest or would be detrimental to any legitimate commercial interest.

Article 5-29. Committee on Phytosanitary and Zoosanitary Measures.

1. The Parties establish a Committee on Phytosanitary and Zoosanitary Measures, composed of representatives of each

Party with responsibilities in phytosanitary and zoosanitary matters.

2. Each Party, when designating its representatives, shall communicate this to the other Parties. When a Party designates more than one representative for this purpose, it shall provide the other Parties with complete and unambiguous information on the scope of responsibilities of those representatives.

3. The Committee shall facilitate and encourage:

a) expedited consultations on specific phytosanitary or zoosanitary matters;

b) the activities of the Parties in accordance with the provisions of this section, particularly as provided in articles 5-20 and 5-21;

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

d) the improvement of phytosanitary and zoosanitary conditions in the territory of the Parties.

4. The Committee:

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

b) may establish such modalities, as it deems appropriate, for the coordination and expeditious solution of matters referred to it, among others:

(i) to rely on experts and expert organizations; and

ii) establish working groups and determine their objectives and areas of action;

c) comply with the instructions of the Commission;

d) report annually to the Commission on the implementation of this section; and e) shall meet at least once a year, unless otherwise agreed.

Article 5-30. Technical Consultations

1. A Party may request consultations with another Party on any problem covered by this section.

2. Each Party may use the good offices of relevant international standardizing organizations, including those referred to in Article 5-20, for advice and assistance on phytosanitary and animal health matters within their respective mandates.

3. A Party asserting that a phytosanitary or zoosanitary measure of another Party is inconsistent with this section shall have to prove such inconsistency.

4. When the Parties involved have had recourse to consultations facilitated by the Committee, such consultations shall, if they so agree, constitute the consultations provided for in Chapter XIX.

Chapter VI. Rules of Origin

Article 6-01. Definitions

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

fungible goods: goods that are interchangeable for commercial purposes, whose properties are essentially identical and which it is impractical to differentiate by simple visual examination one from the other.

non-originating good or non-originating material: a good or material that does not qualify as originating in accordance with the provisions of this chapter.

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

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

b) products of the plant kingdom, harvested in the territory of one or more Parties;

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

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

e) goods such as fish, crustaceans and other marine species obtained from the sea by vessels registered, registered, flagged or reputed as such, by any of the Parties, according to their legislation, through modalities such as affiliation, leasing or chartering;

f) goods produced on board factory ships of any of the Parties, from the goods identified in subparagraph e), provided that such factory ships are registered, registered, flagged or reputed as such, by any of the Parties, according to their legislation, through modalities such as affiliation, leasing or chartering;

g) property 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 more Parties; or

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

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

shipping containers and packing materials: goods that are used to protect a good during transportation, other than retail containers and materials.

total cost: in relation to a good, 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) a reasonable amount for direct and indirect costs and expenses of manufacturing the good.

F.O.B.: free on board (L.A.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: an asset used in the production, testing or inspection of an asset, but not physically incorporated into the asset; or an asset used in the maintenance of buildings or operation of equipment related to the production of an asset, including:

a) fuel and energy;

b) tools, dies and molds;

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

d) lubricants, greases, composite materials and other materials used in production or to operate 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; and

h) any other property that is not incorporated in the property, but whose use in the production of the property 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 6-07.

related person: "linkage between persons" as set forth in Article 15.4 of the Customs Valuation Code.

production: the cultivation, extraction, 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. used: employed or consumed in the production of goods.

transaction value of a good: the price 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 considering that the good is sold for export.

transaction value of a material: the price paid or payable for a material 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 considering that the material is sold for export.

Article 6-02. Interpretation and 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;

c) when applying the Customs Valuation Code to determine the origin of a good:

i) the principles of the Customs Valuation Code shall be applied to domestic transactions, with such modifications as circumstances require, as they would be applied to international transactions; and

ii) the provisions of this Chapter and Chapter VII shall prevail over the Customs Valuation Code, insofar as they are incompatible;

d) for purposes of the definition of transaction value of a good established in Article 6-01, the seller referred to in the Customs Valuation Code shall be the producer of the good;

e) for purposes of the definition of transaction value of a material established in Article 6-01, 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;

f) 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; and

g) the provisions of Articles 6-10 and 6-11 shall prevail over the specific rules of origin indicated in the Annex to Article 6-03.

Article 6-03. Originating Goods.

1. A good shall originate in the territory of a Party when:

(a) is wholly obtained or produced entirely in the territory of one or more Parties as defined in Article 6-01;

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

(c) is produced in the territory of one or more 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 more Parties from non-originating materials that meet a change in tariff classification and other requirements, and meets a regional value content requirement, as specified in the Annex to this Article, as well as the other applicable provisions of this Chapter;

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

(f) except for goods covered by Chapters 61 through 63 of the Harmonized System, is produced in the territory of one or more 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 in an unassembled or disassembled state, 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 6- 04, is not less than the percentage set forth in the Annex to this Article or in Article 6-18, 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 more Parties, and any regional content requirement for a good shall be satisfied entirely in the territory of one or more Parties.

Article 6-04. Value of Regional Content.

1. Each Party shall provide that the regional value content of a good shall be calculated by the exporter or producer in accordance with the transaction value method set out in paragraph 2.

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

VCR= [(VT-VMN) /VT]100 where RCV: regional content expressed as a percentage.

VT: transaction value of an asset adjusted on the basis of F.O.B, except as provided in paragraph 6.

VMN: value of the non-originating materials used by the producer in the production of the good determined in accordance with the provisions of Article 6-05.

3. Each Party shall provide that the transaction value of a good shall be calculated:

(a) in accordance with the principles of Articles 1 and 8 of the Customs Valuation Code; or

(b) where there is no transaction value or where the transaction value of the good cannot be determined in accordance with paragraphs 4 and 5, in accordance with the principles of Article 6.1 of the Customs Valuation Code, except paragraph 1 of the interpretative note to that Article.

4. For purposes of paragraph 3, there is no transaction value when the property is not the subject of a sale. 5. For purposes of Paragraph 3, the transaction value of the property may not be determined when:

(a) there are restrictions on the transfer or use of the property by the purchaser except for those that:

(i) imposed or required by the law or authorities of the Party in which the purchaser of the good is located;

(ii) limit the geographic territory where the property may be resold; or (iii) do not appreciably affect the value of the property;

(b) the sale or price is dependent on a condition or consideration the value of which cannot be determined in relation to the property;

(c) 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; or

(d) 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.

6. For purposes of determining the transaction value of a good, when the producer of the good does not export it directly, the transaction value will be adjusted to the point within the producer's territory where the buyer receives the good.

Article 6-05. Value of Non-originating Materials.

1. The value of a non-originating material used in the production of a good:

(a) the transaction value of the material, calculated in accordance with the principles of Articles 1 and 8 of the Customs Valuation Code; or

(b) if there is no transaction value or if the transaction value of the material cannot be determined in accordance with the principles of Article 1 of the Customs Valuation Code, it shall be calculated in accordance with the principles of Articles 2 to 7 of the Customs Valuation Code; and

(c) shall include, when they are not considered in subparagraphs a) or b):

(i) freight, insurance, packing costs and all other costs incurred in the transportation of the material to the port of importation in the Party where the producer of the good is located, except as provided in paragraph 2; and

(ii) 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% of the value of the material determined in accordance with subparagraphs a) and b).

2. When the producer of the good acquires the non-originating material within its territory, 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 place where the producer is located.

3. For purposes of calculating the regional value content in accordance with Article 6-04, the value of non- originating materials used by the producer in the production of a good shall not include:

(a) the value of non-originating materials used by 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 value of non-originating materials used by the producer of the good in the production of an originating material of his own manufacture and which is designated by the producer as an intermediate material in accordance with Article 6-07.

Article 6-06. 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 applicable change in tariff classification set out in the Annex to Article 6-03 does not exceed 7% of the transaction value of the good determined in accordance with Article 6-04. Where the same good is also subject to the 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.

2. Paragraph 1 does not apply to:

a) goods covered by Chapters 50 to 63 of the Harmonized System, except as provided in paragraph 3.

b) a non-originating material that is used in the production of goods falling within Chapters 1 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.

3. A good classified in Chapters 50 through 63 of the Harmonized System that is non-originating because the fibers, yarns or threads used in the production of that good do not comply with the change in tariff classification provided for in the Annex to Article 6-03, shall be considered as originating provided that, in the case of:

a) yarn or thread, the fiber that does not comply with the change of tariff classification established in article 6-03, used in the production of yarn or thread does not exceed 7% of the total weight of the yarn;

b) fabric, the fiber, yarn or thread that does not comply with the change in tariff classification set forth in Article 6-03, used in the production of fabric does not exceed 7% of the total weight of the fabric; and

c) garments, the fiber, yarn or thread that does not comply with the change in tariff classification set out in Article 6-03, used in the production of the fabric containing the material that determines the tariff classification of the good does not exceed 7% of the total weight of that fabric.

Article 6-07. Intermediate Materials.

1. For purposes of calculating regional value content under Article 6-04, the producer of a good may designate as an intermediate material any self-produced material used in the production of the good provided that, if that intermediate material is subject to a regional value content requirement, no other self-produced material subject to the regional value content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

2. The value of an intermediate material will be:

a) the total cost incurred in respect of all goods produced by the producer of the good, which can be reasonably allocated to that intermediate material in accordance with the provisions of the annex to article 6-01; or

(b) the amount of each cost that is part of the total cost incurred in respect of the intermediate material, which can be reasonably allocated to that intermediate material in accordance with the Annex to Article 6-01.

3. When an intermediate material is designated and is subject to a regional value content requirement, for purposes of calculating the regional value content of the intermediate material, the transaction value referred to in Article 6-04 shall be the value referred to in paragraph 2.

Article 6-08. Accumulation.

1. For purposes of establishing whether a good is originating, an exporter or producer may cumulate the production, with one or more producers in the territory of one or more Parties, of materials that are incorporated in the good so that the production of the materials is considered as having been carried out by that exporter or producer, provided that the provisions of Article 6-03 are complied with.

2. When an exporter or producer decides to cumulate the production of materials in accordance with paragraph 1 and the good is subject to a regional value content requirement, for purposes of calculating the regional value content of the good, the value of the non-originating materials used by the producer of the good shall be the sum of the value of those materials determined in accordance with Article 6-05, less any of the total cost elements of the producer of the material except the value of the non-originating materials used by the producer of the material.

Article 6-09. Expendable Property and Materials.

1. For the purposes of establishing whether a good is originating:

(a) where originating and non-originating fungible materials are used in the production of a good that are physically mixed or combined in inventory, the origin of the materials need not be established by identification of a specific fungible material, but may be defined by one of the inventory management methods set out in paragraph 2; and

(b) where originating and non-originating fungible goods are physically mixed or combined in inventory, and prior to exportation 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 another Party, the origin of the good may be established from one of the inventory management methods set out in paragraph 2.

2. The applicable inventory management methods for materials or consumables shall be as follows:

a) "FIFO" (first-in-first-out) is the inventory management method whereby the origin of the number of units of materials or consumables first received into inventory is considered to be the origin of the same number of units of materials or consumables first removed from inventory;

b) "LIFE" (last-in-first-out) is the method of inventory management whereby the origin of the number of units of materials or consumables received last in inventory is considered as the origin of the same number of units of materials or consumables first out of inventory; or

c) "averaging" is the method of inventory management whereby:

i) the determination as to whether the materials or consumables are originating shall be made, except as provided in item ii), through the application of the following formula:

PMO = (TMO/TMOYN) 100 where

PMO: average of materials or consumables originating.

TMO: total number of units of materials or goods original expendable items that are part of the inventory prior to departure.

TMOYN: total sum of units of materials or originating and non-originating fungible goods that make

up part of the pre-departure inventory.

ii) in the case where the good is subject to a regional value content requirement, the determination of the value of the non-originating materials shall be made through the application of the following formula:

PMN= (TMN/TMOYN) 100 where PMN: average of non-originating materials.

TMN: total value of non-expendable consumables that are part of the inventory prior to the output.

TMOYN: total value of consumables

originating and non-originating companies that form part of the

pre-departure inventory.

Once one of the inventory management methods set forth in paragraph 2 has been selected, it should be used throughout the fiscal year.

Article 6-10. Sets or Assortments.

Goods that are classified as sets 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, shall qualify as originating provided that each of the goods contained in the set complies with the rule of origin that has been established for each good in this chapter. 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, determined in accordance with Article 6-04.

Article 6-11. Non-origin Conferring Transactions and Practices.

A good shall not be considered as originating when it is only subject to the following operations or practices:

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

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

c) dedusting, screening, sorting, classifying, selecting, washing, cutting;

d) packing, repacking or packaging for retail sale;

e) gathering of goods to form sets or assortments;

f) application of trademarks, labels or similar distinctive signs;

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

h) any price-fixing 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.

Article 6-12. 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 6-03, if subsequent to such 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 a Party.

2. Notwithstanding the provisions of paragraph 1, a good shall not lose its originating status when, while in transit through the territory of one or more non-Party countries, 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) is not intended for trade, use or use in the country or countries of transit; and

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

Article 6-13. 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 of such materials as reported in the accounting records of the producer of the good.

Article 6-14. Accessories, Spare Parts and Tools.

1. Accessories, spare parts and tools delivered with the good as part of the usual accessories, spare parts and tools of the good shall be considered to be originating if the good is originating and 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 6-03, provided that:

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

b) the quantities and value of such accessories, spare or replacement parts and tools are those customary for the property.

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

Article 6-15. Containers and Packaging Materials for Retail Sale.

Containers and packaging materials in which a good is presented for retail sale, when classified with the good they contain, shall be disregarded 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 6-03. When the good is subject to the regional value content requirement, the value of the 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 6-16. Containers and Packing Materials for Shipment.

1. Containers and packing materials in which a good is packed for transportation shall be disregarded for purposes of 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 6-03. Where the good is subject to the regional value content requirement, the value of the shipping packing materials in which a good is packed for transportation shall be considered as originating or non-originating, as the case may be, in calculating the regional value content of the good.

2. When the good is subject to the regional value content requirement, the value of the packing material for shipment shall be the cost of that material as reported in the records of the producer of the good.

Article 6-17. Consultation and Modifications.

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

2. It will be the responsibility of the Working Group:

a) to ensure the effective implementation and administration of this chapter;

b) to reach agreements on the interpretation, application and administration of this chapter; and

c) to attend to any other matter agreed upon by the Parties.

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

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

5. The Parties listed in the annex to this article may consult through the Working Group on Rules of Origin in accordance with the provisions of that annex.

Article 6-18. Regional Content Provisions.

1. The regional content expressed as a percentage will be:

a) for goods classified in chapters 28 to 40 of the Harmonized System:

(i) 40% during the first three years after the entry into force of this Treaty;

(ii) 45% during the fourth and fifth year after the entry into force of this Agreement; and

(iii) 50% as of the first day of the sixth year after the entry into force of this Treaty;

b) for goods classified in chapters 72 to 85 and 90 of the Harmonized System, 50% as of the entry into force of this Agreement;

c) for goods not included in subparagraphs a) and b): (i) 50% during the first five years after the entry into force of this Agreement; and ii) 55% as of the first day of the sixth year after the entry into force of this Treaty.

d) the regional content percentages established in subparagraph c) do not apply to goods for which a different percentage is specified in the annex to Article 6-03, Section B.

Article 6-19. Special Provisions.

1. For the purposes of the preferences set out in the Duty-Free Program for goods that do not have a specific rule of origin in this Agreement, as well as for goods included in a tariff item or tariff heading identified with the code "EXCL" in the Duty-Free Program, Resolution No. 78 of the ALADI Committee of Representatives shall apply. The provisions of Chapter VII shall apply with respect to the goods referred to in this paragraph.

2. The annex to this article applies to the Parties indicated therein.

Article 6-20. Regional Input Integration Committee.

1. The Parties establish the Regional Input Integration Committee (CIRI).

2. Each Party shall designate, for each case that arises, a representative of the public sector and a representative of the private sector to integrate the CIRI, except in the case of goods classified in chapters 50 to 63, in which the CIRI will be integrated only by representatives of Colombia and Mexico, until the rules of origin are agreed between Mexico and Venezuela for the goods classified in those chapters.

3. The CIRI shall operate for a period of 10 years from the entry into force of this Agreement. However, if during the last three years waivers have been granted under the terms of paragraph 2 of Article 6-23, the term shall be extended for such period and for such goods as the Parties may agree.

Article 6-21. Functions of CIRI.

1. CIRI shall evaluate the actual and proven inability in the territory of the Parties of a producer of goods to make available on normal commercial terms, in terms of timeliness, volume, quality and prices, for equivalent transactions, the materials referred to in paragraph 3 used by the producer in the production of a good.

2. For purposes of paragraph 1, producer means a producer of goods for export to the territory of another Party under preferential tariff treatment.

3. The materials used in the production of a good referred to in paragraph 1 are only those specified in the annex to this article.

Article 6-22. Procedure.

1. For the purposes of Article 6-21, the CIRI shall conduct an investigation procedure that may be initiated at the request of a Party or at the request of the Commission. This procedure shall commence within five days of receipt of the request and the documentation supporting it.

2. Inthe course of this procedure, CIRI will evaluate the evidence submitted to it.

Article 6-23. Opinion to the Commission.

1. CIRI shall issue an opinion to the Commission within forty days from the date of initiation of the investigation procedure.
2. CIRI will rule:

a) on the producer's inability to dispose of materials under the terms indicated in paragraph 1 of article 6-21; and

b) when the inability referred to in subparagraph (a) is established, on the amounts and terms of the waiver required in the use of the materials referred to in paragraph 3 of Article 6-21, in order for a good to qualify for preferential tariff treatment.

3. CIRI shall send its opinion to the Commission within five days of its issuance.

Article 6.24. Resolution of the Commission.

1. If CIRI issues an opinion under the terms of Article 6-23, the Commission shall issue a resolution within ten days of receiving the opinion, in accordance with the provisions of paragraph 3 of Article 6-23, unless it agrees to a different term.

2. When the incapacity referred to in paragraph 1 of Article 6-21 is established, the resolution of the Commission shall establish a waiver, in the amounts and terms agreed upon by CIRI in its opinion, for the use of the materials referred to in paragraph 3 of Article 6-21, with such modifications as it deems appropriate.

3. If the Commission has not taken a decision within the time limit referred to in paragraph 1, the opinion of CIRI shall be deemed to be ratified.

4. The resolution referred to in paragraph 2 shall be valid for a maximum of one year from the date of its issuance. The Commission may extend, at the request of the Party concerned, within six months prior to its expiration and after review by the CIRI, its resolution for an equal term if the causes that gave rise to it persist.

5. Any Party may request, at any time during its term, the review of the Commission's resolution.

Article 6-25. Referral to the Commission.

1. If the CIRI does not issue the opinion referred to in Article 6-23 within the time limits mentioned therein, because there is insufficient information or consensus on the case in question, the consultations referred to in Article 19-05 shall be deemed concluded and shall be referred to the Commission within five days following the expiration of that time limit.

2. The Commission shall issue a resolution in terms of paragraph 2 of article 6-23 within 10 days. If the Commission does not issue a resolution, the provisions of articles 19-07 to 19-17 shall apply subject to the provisions of paragraphs 3 to 7.

3. The term for the installation and issuance of the final resolution of the arbitration tribunal referred to in Article 19-07 shall be fifty days.

4. For the purposes of paragraph 2, it shall be understood that the mission of the arbitral tribunal shall be to render a decision in terms of article 6-23, paragraph 2 (a) and (b).

5. The final decision of the arbitral tribunal shall be binding on the Parties and, if it decides on the waiver referred to in Article 6-23(2)(b), shall be valid for a maximum of one year. The Commission may extend, at the request of the Party concerned within six months prior to its expiration and after review by CIRI, the decision of the arbitral tribunal for an equal term, if the causes that gave rise to it persist.

6. The complaining Party may invoke the provisions of Article 19-17, paragraphs 1 to 3, if the arbitral tribunal rules in its favor and the Party complained against fails to comply with the final decision within the period of time fixed by the arbitral

tribunal.

7. The Party complained against may avail itself of the provisions of paragraphs 4 and 5 of article 19-17.

Article 6-26. Operating Regulations.

1. Not later than January 1, 1995, the Parties shall agree on rules of operation for CIRI. 2. The regulations shall include the rules of operation of the CIRI and the conditions regarding delivery times, quantity, quality and prices of the materials referred to in paragraph 3 of article 6-21.

Chapter VII. Customs Procedures

Article 7-01. Definitions

1. The definitions in Chapter VI are incorporated into this chapter.

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

competent authority: the authority which, under the domestic law of each Party, is responsible for the administration of its customs, tax or trade laws and regulations.

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

preferential tariff treatment: the application of the import tax to an originating good in accordance with the Annex to Article 3-04.

Article 7-02. Declaration and Certification of Origin.

1. The certificate of origin established in Annex 1 to this Article shall serve to certify that a good exported from the territory of one Party to the territory of another Party qualifies as originating. This certificate may be modified by agreement of the Parties.

2. Each Party shall provide that for the export to another Party of a good in respect of which the importer is entitled to claim preferential tariff treatment, the exporter shall complete and sign a certificate of origin in respect of that good. The exporter's certificate of origin shall require validation by the competent authority of the exporting Party.

3. In the event that the exporter is not the producer of the good, he shall complete and sign the certificate of origin on the basis of a declaration of origin in accordance with Annex 2 to this Article covering the good being exported, completed and signed by the producer of the good and provided voluntarily to the exporter. The declaration of origin completed and signed by the producer shall not be validated under the terms of paragraph 2.

4. The authority of the exporting Party:

a) maintain the administrative mechanisms for the validation of the certificate of origin completed and signed by the exporter;

b) provide, at the request of the importing Party, information concerning the origin of the goods imported under preferential tariff treatment; and

c) communicate to the other Parties the list of the officials authorized to validate the certificates of origin with their corresponding seals, signatures and facsimile. Modifications to this list shall become effective thirty days after receipt of the respective communication.

5. Each Party shall provide that the certificate of origin completed and signed by the exporter and validated by the competent authority of the exporting Party may cover a single importation of one or more goods and shall be valid for one year from the date of signature.

Article 7-03. Obligations with Respect to Imports.

1. Each Party shall require the importer requesting preferential tariff treatment for a good of another Party to:

a) declare in writing, on the import document based on a valid certificate of origin, that the good qualifies as originating;

b) has the certificate of origin in his possession at the time of making such declaration; and

c) present or surrender the certificate of origin when requested by the competent authority.

2. Each Party shall require the importer to present or submit a corrected declaration and pay the corresponding import duties, when the importer has reason to believe that the certificate of origin on which his import declaration is based contains incorrect information. If the importer presents the aforementioned declaration spontaneously, in accordance with the domestic legislation of each Party, he shall not be penalized.

3. Each Party shall provide that where the 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 another Party for which the preference was claimed.

4. The request referred to in paragraph 1, subparagraph c) shall not prevent the clearance or release of the good under preferential tariff treatment requested in the import declaration.

Article 7-04. Obligations with Respect to Exports.

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

2. An 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 communicate, in writing, any changes which may affect the accuracy or validity of the certificate or declaration to all persons to whom it has been furnished and, in accordance with the legislation of the Party concerned, to the competent authority of the exporting Party. In such a case, he may not be penalized for having submitted an incorrect certificate or declaration.

3. Each Party shall provide that a false certificate or declaration of origin made by an exporter or producer shall have the same administrative consequences as would apply to false declarations or statements made in its territory by an importer in contravention of its customs laws and regulations, with such modifications as the circumstances may require.

Article 7-05. Exceptions.

The certificate of origin shall not be required in the case of the importation of a good for which the Party into whose territory it is imported has waived the requirement of presentation of a certificate of origin.

Article 7-06. Accounting Records.

1. Each Party shall provide that an exporter or a producer who completes and signs a certificate or declaration of origin shall keep for a minimum of five years from the date of signature of the certificate or declaration, all records and documents relating to the origin of the good, including those relating to:

a) the acquisition, costs, value and payment of the good that is exported from its territory;

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

c) the production of the good in the form in which it is exported from its territory.

2. Each Party shall provide that the exporter or producer shall provide to the competent authority of the importing Party the records and documents referred to in paragraph 1. Where the records and documents are not in the possession of the exporter or producer, the exporter or producer may request the producer or supplier of the materials to provide the records and documents through him to the verifying competent authority.

3. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported from another Party shall retain for at least five years from the date of importation, the certificate of origin and all documentation relating to the importation required by the importing Party.

Article 7-07. Procedures to Verify Origin.

1. Before carrying out a verification in accordance with the provisions of this Article, the competent authority of the importing Party may request information regarding the origin of the exported goods from the competent authority of the

exporting Party.

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

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

b) verification visits to an exporter or a 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 7-06, and inspecting the facilities used in the production of the good and, where appropriate, those used in the production of the material.

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

3. When the exporter or producer receives a questionnaire pursuant to paragraph 2, subparagraph a), it shall respond and return that questionnaire within thirty days. During that period the exporter or producer may request in writing to the importing Party conducting the verification, an extension which shall not exceed thirty days. This request shall not result in the denial of preferential tariff treatment.

4. Inthe event that the exporter or producer fails to return the duly completed questionnaire within the appropriate time limit, the importing Party may deny preferential tariff treatment under paragraph 11.

5. The importing Party that carries out a verification by questionnaire shall have 45 days after receiving the response to the questionnaire to send the notification referred to in paragraph 6, if it deems it appropriate.

6. Before carrying out a verification visit pursuant to paragraph 2(b), the importing Party shall be obliged, through its competent authority, to give at least 30 days' written notice of 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 the latter Party in the territory of the importing Party. The competent authority of the importing Party shall obtain the written consent of the exporter or producer to be visited.

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

a) identification of the competent authority making the written communication; b) the name of the exporter or producer you intend to visit; 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 referred to in the certificate or certificates of origin;

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

8. Any change in the number, name or position of the officials referred to in paragraph 7(e) shall be communicated in writing to the exporter or producer and to the authority of the exporting Party prior to the verification visit. Any modification of the information referred to in paragraph 7 (a), (b), (c), (d) and (f) shall be notified in accordance with paragraph 6.

9. If within thirty days of receipt of the communication regarding the proposed verification visit pursuant to 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 visit.

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

11. The Party that has carried out a verification shall provide the exporter or the producer whose good or goods have been subject to the verification with a document containing the decision determining whether or not the good or goods qualify as originating, including the legal and factual basis for the determination.

12. Where a Party's verification indicates that the exporter or producer has more than once falsely or unfoundedly certified or declared that a good qualifies as originating, the Party may suspend preferential tariff treatment for identical goods exported or produced by that person until that person proves compliance with the provisions of Chapter VI.

13. Each Party shall provide that a decision that a good imported into its territory does not qualify as originating according to the tariff classification or value applied by the Party to one or more materials used in the production of the good, and that differs from the tariff classification or value applied to the materials by the exporting Party, shall not take effect until it is

communicated in writing both to the importer of the good and to the exporter or producer who has completed and signed the certificate or declaration of origin covering the good.

14. The Party shall not apply the ruling made under paragraph 13 to an importation made before the date on which the ruling takes effect when the competent authority of the exporting Party has issued a ruling or advance ruling on the tariff classification or value of the materials, as to which there can be certainty under the customs laws and regulations of that exporting Party.

15. Where a Party denies preferential tariff treatment to a good pursuant to a ruling made under paragraph 13, that Party shall postpone the effective date of the denial for a period not to exceed ninety 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 he has relied in good faith, to his 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 the domestic legislation of the Parties involved.

Article 7-08. Review and Challenge.

1. Each Party shall grant to exporters and producers of another Party the same rights of review and challenge of origin determination decisions and advance rulings provided to importers in its territory to whom:

a) completes and signs a certificate or declaration of origin covering a good that has been the subject of a decision of determination of origin in accordance with paragraph 11 of Article 7-07; or

b) has received an advance criterion in accordance with article 7-10.

2. Each Party shall, in accordance with paragraph 1, provide access to at least one level of administrative review independent of the official or agency responsible for the decision subject to review, and access to one level of judicial review of the initial decision or decision made at the ultimate level of administrative review. Administrative or judicial review shall be in accordance with the domestic law of each Party.

Article 7-09. 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 7-10. Anticipated Criteria.

1. Each Party shall provide that, through its competent authority, advance written criteria shall be issued promptly prior to the importation of a good from another Party into its territory. The advance ruling shall be issued at the request of the importer in its territory or the exporter or producer in the territory of the other Party, based on the facts and circumstances presented by them as to whether the goods qualify as originating in accordance with the rules of origin of Chapter VI.

a) whether the non-originating materials used in the production of a good comply with the applicable change in tariff classification set out in the Annex to Article 6-03 of Chapter VI as a result of production taking place in the territory of one or more Parties;

b) whether the good complies with the regional value content requirement set forth in the Annex to Article 6-03 of Chapter VI;

c) whether the method of calculating the value of a good or of the materials used in the production of a good, to be applied by the exporter or producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code and for the purpose of determining whether the good meets the regional value content requirement under the Annex to Article 6-03 of Chapter VI; or

d) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain, after publication, procedures for the issuance of advance criteria that include:

a) a detailed description of the information reasonably required to process a request;

b) the power of its competent authority to request additional information from the applicant at any time during the process

of evaluating the application;

c) the obligation to issue the advance ruling within 120 days from the time the authority has obtained all the necessary information from the requesting party; and

d) the obligation to fully explain the reasons for the anticipated criterion when it is unfavorable to the applicant.

3. Each Party shall apply the advance criteria to imports from the date of issuance of the criterion, or ata later date specified therein, unless the advance criterion is modified or revoked in accordance with paragraph 6.

4. Each Party shall accord the same treatment, interpretation and application of the provisions of Chapter VI, concerning the determination of origin, to anyone requesting an advance ruling, where the facts and circumstances are identical in all material respects.

5. The advance ruling may be modified or revoked by the issuing Party in the following cases:

a) when it contains or has been based on any error:

i) in fact;

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

iii) whether the good meets the regional value content requirement;

b) when the anticipated criterion is not in conformity with an interpretation agreed between the Parties with respect to the rules of origin of this Agreement;

c) to comply with a court decision; and d) when the circumstances or facts on which the anticipated criterion is based change.

6. 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. The modification or revocation of an advance ruling may not be applied to imports of a good made before those dates, unless the person to whom the ruling was issued has not acted in accordance with the terms and conditions of the ruling originally issued.

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

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

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

b) the exporter's or producer's operations are consistent with the circumstances and the essential facts on which such judgment is based; and

c) the supporting data and calculations used in the application of the method to calculate the value are correct in all material respects.

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

10. Each Party shall provide that, where the competent authority decides that the advance ruling was based on incorrect information, the person to whom it was issued shall not be penalized, if he demonstrates that he acted with reasonable care and in good faith in disclosing the facts and circumstances giving rise to the advance ruling.

11. Each Party may apply such measures as the circumstances warrant where the competent authority has issued an advance ruling to a person who has falsely represented or omitted material facts or circumstances on which the advance ruling is based, or has failed to act in accordance with the terms and conditions of the advance ruling.

12. The validity of an advance ruling shall be subject to the continuing obligation of the person to whom it was issued to inform the competent authority of any substantial change in the facts or circumstances on which the authority relied to issue that ruling.

Article 7-11. Customs Procedures Working Group.

1. The Parties create a Customs Procedures Working Group composed of representatives of each Party to meet at least twice a year, or at the request of either Party.

2. It will be the responsibility of the Working Group:

a) seek to reach agreements on:

i) the interpretation, application and administration of this chapter;

ii) tariff classification and valuation matters related to origin determinations;

iii) the procedures for the application, approval, modification, revocation and application of the anticipated criteria;

iv) amendments to the certificate or declaration of origin; and

v) any other matter submitted to it by a Party.

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

Chapter VIII. Safeguards

Article 8-01. Definitions.

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

similar good: that which, although it does not coincide in all its characteristics with the good to which it is compared, has some identical characteristics, mainly as regards its nature, use, function and quality.

serious injury: a general and significant impairment of a domestic production.

Global measures: emergency measures on the importation of goods under Article XIX of GATT.

domestic production: producer or producers of identical, similar or directly competitive goods operating within the territory of one of the Parties and representing a substantial proportion of the total domestic production of such goods. From the fourth year after the entry into force of this Agreement, that substantial proportion shall be at least 40%.

Article 8-02. Safeguard Regime.

The Parties may apply to imports of goods made in accordance with this Agreement a safeguard regime whose application shall be based on clear, strict and time-bound criteria. The safeguard regime provides for measures of a bilateral or global nature.

Section A. Bilateral Measures.

Article 8-03. Conditions of Application.

If as a result of the application of the Duty Drawback Program the importation of one or more goods originating in any of the Parties is made in such quantities and under such conditions that, by themselves, they are the substantial cause of serious injury or threat of serious injury to the domestic production of identical, similar or directly competitive goods, the importing Party may adopt bilateral safeguard measures, which shall be applied in accordance with the following rules:

a) where strictly necessary to counteract serious injury or threat thereof caused by imports originating in the other Party, a Party may adopt safeguard measures within a period of fifteen years from the date of entry into force of this Agreement;

b) the measures shall be exclusively of a tariff nature. The tariff to be determined shall in no case exceed the tariff in force against third countries for that good at the time the safeguard is adopted;

c) the measures may be applied for a period of up to one year and may be extended once, for an equal and consecutive period, as long as the conditions that motivated them persist;

d) upon termination of the measure, the tariff rate or tariff rate shall be the one that corresponds to the good subject to the measure according to the Duty-Free Program.

Article 8-04. Compensation for Bilateral Measures.

1. When the cause of the application of the bilateral safeguard measure is threat of serious injury or when the Party intends to extend the measure, it shall grant the exporting Party mutually agreed compensation, which shall consist of temporary additional tariff concessions, the effects of which on the trade of the exporting Party are equivalent to the impact of the safeguard measure.

2. The Parties shall agree on the terms of the compensation referred to in paragraph 1 at the stage of prior consultations established in Article 8-14.

3. If the Parties fail to reach agreement on compensation, the Party proposing to adopt the measure shall have the authority to do so and the exporting Party may adopt tariff measures that have trade effects equivalent to those of the measure adopted.

Section B. Overall Measures

Article 8-05. Rights Under GATT.

The Parties confirm their rights and obligations under Article XIX of the GATT with respect to any emergency measures taken by a Party in the implementation of this Agreement.

Article 8-06. Criteria for the Adoption of a Measure.

1. When a Party decides to adopt a global safeguard measure, it may only apply it to the other Party when imports of a good from the latter, considered individually, represent a substantial part of total imports and contribute in a significant manner to the serious injury or threat of serious injury to the domestic production of the importing Party.

2. For the purposes of paragraph 1, the following criteria shall be taken into account:

a) imports from the other Party shall not normally be considered substantial if the other Party is not one of the five principal suppliers of the good subject to the proceeding, based on its participation in such imports during the immediately preceding three years;

b) imports from the other Party shall not normally be considered to contribute importantly 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 of the good into the Party proposing to take the measure from all sources during the same period.

Article 8-07. Compensation for Global Measures.

The Party adopting a global safeguard measure shall grant the exporting Party compensation in accordance with the provisions of the GATT.

Section C. Procedure

Article 8-08. Adoption Procedure.

The Party that intends to adopt a bilateral or global safeguard measure pursuant to this Chapter shall comply with the procedure provided for in this Section.

Article 8-09. Investigation.

1. In order to determine whether a safeguard measure should be applied, the competent authority of the importing Party shall conduct an investigation, which may be ex officio or at the request of a party.

2. The purpose of the investigation referred to in the paragraph shall be:

a) assess the volume and conditions under which imports of the good in question are made;

b) prove the existence of serious injury or threat of serious injury to domestic production;

c) to prove the existence of a direct causal link between the increase in imports of the good and the serious injury or threat of serious injury to the domestic production.

Article 8-10. Determination of Damage.

For purposes of establishing the existence of serious injury or threat of serious injury, the competent authorities shall evaluate factors of an objective and quantifiable nature having a bearing on the affected domestic production, 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; profits; losses and employment.

Article 8-11. Effect of other Factors.

If factors other than increased imports from the other Party are injuring or threatening to injure domestic production at the same time, the injury caused by these factors cannot be attributed to the imports in question.

Article 8-12. Publication and Communication.

The resolution ordering the initiation of a safeguard investigation shall be published in the respective official publication of the importing Party and shall be communicated to the interested parties within ten working days following such publication.

Article 8-13. Content of the Communication.

The competent authority shall make the communication referred to in article 8-12, which shall contain sufficient background information to support and motivate the initiation of the investigation, including:

a) the names and available addresses of the domestic producers of identical or similar goods or direct competitors representative of the domestic production; their share in the domestic production of such goods and the reasons why they are considered representative of that sector;

b) aclear and complete description of the goods subject to the investigation, the tariff items under which they are classified and the tariff treatment in force, as well as the identification of identical, similar or directly competitive goods;

c) import data for the three years prior to the initiation of the investigation;

d) data on the total domestic production of the identical, similar or directly competitive goods for the three years prior to the initiation of the proceeding;

e) data demonstrating that there is prima facie evidence of serious injury or threat thereof to the domestic production in question caused by the imports, and a summary of the basis for the allegation that increased imports of such goods, relative or absolute to domestic production, are the cause thereof; and

f) where appropriate, the criteria and objective information demonstrating that the conditions for the application of a comprehensive safeguard measure to the other Party set out in this Chapter are met.

Article 8-14. Prior Consultations.

1. If, as aresult of the safeguard investigation, the competent authority determines, on the basis of objective evidence, that the conditions provided for in this Chapter are met, the Party that decides to initiate a procedure that could result in the adoption of a safeguard measure shall so inform the other Party, requesting consultations as provided for in this Chapter.

2. A third Party that expresses a substantial interest in the application of a bilateral safeguard measure because its trade may be affected by the application of the measure may participate in the consultations referred to in paragraph 1.

3. The importing Party shall provide adequate opportunity for prior consultations. The period of prior consultations shall begin on the day following receipt by the exporting Party of the communication containing the request for such consultations. The communication shall contain the data demonstrating the serious injury or threat of serious injury caused by the imports subject to investigation, and relevant information on the safeguard measures intended to be taken and their duration.

4. The prior consultation period shall be forty-five days, unless the Parties agree otherwise.

5. Safeguard measures may only be adopted once the prior consultation period has concluded.

Article 8-15. Confidential Information.

1. The consultation procedure shall not oblige the Parties to disclose information that has been provided on a confidential basis, the disclosure of which could infringe their laws regulating the matter or harm commercial interests.

2. Notwithstanding the foregoing, the importing Party intending to apply the measure shall provide a non- confidential summary of the information of a confidential nature.

Article 8-16. Remarks by the Exporting Party.

During the consultation period, the exporting Party shall make such comments as it deems appropriate, in particular on the appropriateness of invoking the safeguard and the proposed measures.

Article 8-17. Extension.

If the importing Party determines that the reasons that gave rise to the application of the safeguard measure still exist, it shall inform the exporting Party of its intention to extend it, at least sixty days prior to the expiration of the validity of such measures. The extension procedure shall be carried out in accordance with the provisions established in this Chapter for the adoption of safeguard measures.

Chapter IX. Unfair International Trade Practices

Article 9-01. Definitions.

For the purposes of this chapter, the following definitions shall apply: countervailing duty: antidumping duties and countervailing duties or countervailing duties, as the case may be.

interested party: the producers, importers and exporters of the good subject to investigation, as well as foreign legal entities or legal persons having a direct interest in the investigation in question.

final determination: the resolution of the authority that decides whether or not to impose definitive countervailing duties.

initial resolution: the resolution of the competent authority formally declaring the initiation of the investigation.

preliminary determination: the determination of the competent authority that decides whether or not to impose a provisional countervailing duty.

Article 9-02. Export Subsidies.

From the entry into force of this Agreement, the Parties shall not grant subsidies to exports of industrial goods destined for the markets of the Parties. Subsidies on exports of agricultural goods shall be governed in accordance with the provisions of Chapter V, Section A.

Article 9-03. Compensatory Fees.

The importing Party, in accordance with its legislation and in conformity with the provisions of this Agreement, the GATT, the Agreement on Implementation of Article VI of the GATT (Antidumping Code), the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Subsidies and Countervailing Duties Code), may establish and apply countervailing duties in the event of situations in which, through an objective examination based on positive evidence:

a) the existence of imports is determined:

i) under conditions of dumping; or

ii) of goods that have received export subsidies, including subsidies other than those granted to exports, that adversely affect the conditions of normal competition; and

b) the existence of injury or threat of injury to the domestic production of identical or similar goods in the importing Party or the significant delay in the commencement of such production, as a result of such imports of identical or similar goods from

another Party, is proven.

Article 9-04. Minimum Margins.

1. The Party shall terminate the investigations referred to in Article 9-03 when the margin of dumping is less than 2% of the normal value of the investigated good or when the amount of the subsidy is less than 1% ad valorem.

2. Likewise, the investigations referred to in Article 9-03 shall be terminated when the volume of dumped or subsidized imports represents less than 1% of the domestic market of the like good in the importing Party, except in the case in which the volume of imports from the exporting Party is lower, individually considered, but cumulated with dumped or subsidized imports from other countries, represents more than 2.5% of that market.

Article 9-05. Communications and Deadlines.

1. Each Party shall communicate the resolutions on the matter directly to its importers and to the exporters of the other Party of which it is aware and, where appropriate, to the government of the exporting Party, to the responsible national body referred to in Chapter XX, and to the diplomatic mission of the exporting Party accredited in the Party conducting the investigation. Likewise, actions shall be taken to identify and locate the interested parties in the proceeding in order to guarantee the exercise of the right of defense.

2. The communication of the initial determination shall be made within eight working days of its publication in the official publication of the importing Party.

3. The communication of the initial resolution shall contain, at least, the following information:

a) the time limits and place for the presentation of pleadings, evidence and other documents; and

b) the name, address and telephone number of the office where information can be obtained, consultations can be made and the case file can be inspected.

4. Acopy of the respective publication in the official organ of diffusion of the importing Party, as well as a copy of the public version of the complaint and its annexes, shall be sent to the exporters with the communication.

5. The Party shall grant the interested parties of which it has knowledge a period of no less than thirty working days to respond, counted from the publication of the initial resolution in the respective official organ of diffusion, in order for them to appear to state what is in their best interest, and shall grant the interested parties an equal period for the same purposes counted from the publication of the preliminary resolution in that organ.

Article 9-06. Contents of the Resolutions.

The initial, preliminary and final determination shall contain at least the following:

a) the name of the applicant;

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

c) the elements and evidence used to determine the existence of the unfair practice, the damage or threat of damage, and its causal relationship;

d) the legal and factual considerations that led the authority to initiate an investigation or to impose an antidumping duty; and

e) the legal arguments, data, facts or circumstances that support and motivate the resolution in question.

Article 9-07. Rights and Obligations of the Interested Parties.

For the purposes of the rights and obligations established in this Chapter, each Party shall ensure that the interested parties in the administrative investigation have the same rights and obligations. The rights and obligations of the interested parties shall be respected and observed, both in the course of the proceeding and in the administrative and contentious instances that are filed against the final determinations.

Article 9-08. Clarifications.

Once a provisional or definitive countervailing duty has been imposed, the interested parties may request the authority that issued the act to resolve whether a certain good is subject to the measure imposed, or to clarify any aspect of the corresponding resolution.

Article 9-09. Conciliation Hearings.

During the course of the investigation, any interested party may request the competent authority to hold conciliatory hearings with a view to reaching a satisfactory solution.

Article 9-10. Revision.

Definitive countervailing duties may be reviewed by the competent authority in the event of changed circumstances in the market of the importing Party and the export market.

Article 9-11. Validity of Countervailing Duties.

A definitive antidumping duty will be automatically eliminated when after five years from the date of its entry into force, none of the interested parties has requested its review, nor has the competent authority initiated such review ex Officio.

Article 9-12. Access to the File.

Interested parties shall have access to the administrative file of the proceeding in question, except for confidential information contained therein.

Article 9-13. Dispatch of Copies.

Interested parties in the investigation may send to the other interested parties copies of each of the reports, documents and evidence submitted to the investigating authority in the course of the investigation.

Article 9-14. Information Meetings.

1. The competent authority of the importing Party, at the request of the interested parties, shall hold information meetings to provide relevant information on the content of the provisional and final determinations.

2. With respect to a preliminary determination, the request referred to in paragraph 1 may be submitted at any time during the investigation. In the case of a final resolution, such request shall be submitted within five working days following the publication of the resolution in the respective official organ of dissemination. In both cases the competent authority shall conduct the meeting within fifteen working days from the filing of the request.

3. In the information meetings referred to in paragraphs 1 and 2, the interested parties shall have the right to review the reports or technical reports, the methodology, the spreadsheets and, in general, any element on which the corresponding resolution has been based, except for confidential information.

Article 9-15. Other Rights of Interested Parties.

1. The competent authorities shall hold, at the request of a party, conciliatory meetings in which the interested parties may appear and listen to their counterparts regarding the information or evidence that the investigating authority deems appropriate.

2. Interested parties shall be given the opportunity to present their allegations after the evidence period. The pleadings shall consist of the presentation in writing of conclusions regarding the information and arguments rendered during the course of the investigation.

Article 9-16. Publication.

Each Party shall publish the following resolutions in its respective official organ of diffusion:

a) the initial, preliminary and final determination;

b) that which declares the administrative investigation concluded:

i) because of commitments with the exporting Party or with the exporters, as the case may be;

ii) because of commitments arising from conciliation hearings; or

iii) for any other cause.

c) those rejecting the complaints; and

d) those by which the withdrawals of the complainants are accepted.

Article 9-17. Access to other Files.

The competent authority of each Party shall allow interested parties, in the course of an investigation, access to public information contained in the administrative records of any other investigation, after sixty working days from the final resolution of the investigation.

Article 9-18. Reimbursement or Reimbursement.

If a final determination determines a lower countervailing duty than that provisionally determined, the competent authority of the importing Party shall refund the amounts paid in excess.

Article 9-19. Time Limits for Provisional Measures.

No Party shall impose a provisional countervailing duty until sixty working days after the date of publication of the initial determination in its respective official publication.

Article 9-20. Reforms to National Legislation.

1. When a Party decides to amend, add or repeal its legal provisions on unfair international trade practices, it shall notify the other Parties immediately after their publication in its respective official organ of diffusion.

2. Amendments, additions or abrogations shall be compatible with the international regulations mentioned in article 9-03.

3. The Party that considers that the amendments, additions or abrogations are in violation of the provisions of this Chapter may resort to the dispute settlement mechanism of Chapter XIX.

Article 9-21. Substantiation of the Procedure.

The Parties shall conduct investigation procedures on unfair practices exclusively through the competent national public agencies, agencies or entities.

Article 9-22. Settlement of Disputes.

Where the final decision of an arbitral tribunal declares that the application of an antidumping duty by a Party is inconsistent with any provision of this Chapter, the Party shall cease to apply or shall adjust the antidumping duty in question with respect to the goods of the complaining Party or Parties.

Chapter X. General Principles on Trade In Services

Article 10-01. Definitions

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

trade in services: the provision of a service:

a) from the territory of one Party to the territory of another Party;

b) in the territory of a Party to a consumer of another Party;

c) through the presence of service supplying enterprises of a Party in the territory of another Party;

d) by natural persons of a Party in the territory of another Party.

enterprise of a Party: an enterprise incorporated or organized under the laws of a Party, including branches located in the territory of a Party that carry out economic activities in that territory;

measures adopted or maintained by a Party: measures adopted or maintained by:

a) federal or central, state or departmental governments; and

b) non-governmental bodies exercising regulatory, administrative or other governmental authority delegated to them by those governments.

service supplier of a Party: a person of a Party who intends to supply or does supply a service;

quantitative restriction: a non-discriminatory measure that imposes limitations on:

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

b) the operations of any service provider, either through a fee or a proof of economic need, or by any other quantitative means.

professional services: services that require education or higher education or training for their provision and whose exercise is authorized or restricted by a Party, but does not include services provided by those who practice a trade or to crew members of merchant ships and aircraft.

Article 10-02. Scope of Application.

1. This Chapter applies to measures that a Party adopts or maintains on trade in services conducted by service suppliers of another Party, including those relating to:

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

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

c) access to and use of distribution and transportation systems;

d) access to public telecommunications services and the use of public telecommunications networks;

e) the presence in its territory of a service supplier of another Party; and

f) the granting of a bond or other form of financial guarantee as a condition for the provision of a service.

2. This chapter does not apply to:

a) subsidies or grants provided by a Party or a state enterprise, including government- supported loans, guarantees and insurance;

b) non-commercial services or governmental functions such as law enforcement, social rehabilitation services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care;

c) financial services.

3. Nothing in this chapter shall be construed to mean:

a) impose any obligation on a Party with respect to a national of another Party who seeks to enter its labor market or who has permanent employment in the territory of the receiving Party, or to confer any rights on such national with respect to such access or employment;

b) impose any obligation or confer any right on a Party with respect to government procurement by a Party or a State enterprise referred to in Chapter XV.

4. The provisions of this Chapter shall apply to the measures related to the services contemplated in Annexes 1 and 2 to this Article, only to the extent and under the terms established in those Annexes.

Article 10-03. Transparency.

1. Each Party shall publish promptly and, except in emergency situations, no later than the date of their entry into force, all

relevant laws, regulations and administrative guidelines and other decisions, rulings or measures of general application that refer to or affect the operation of this Chapter, and have been put into effect by governmental institutions of the Party or by a non-governmental regulatory body of the Party. International agreements relating to or affecting trade in services and those that are developments of this Agreement shall also be published.

2. Where it is not feasible or practical to publish the information referred to in paragraph 1, it shall be made available to the public in another manner.

3. Each Party shall promptly inform the other Parties, at least annually, of the establishment of new laws, regulations or administrative guidelines significantly affecting trade in services covered by its specific commitments under this Chapter, or of changes thereto.

4. Each Party shall respond promptly to all specific requests for information from other Parties on all measures referred to in paragraph 1. Each Party shall also establish one or more centers responsible for providing specific information to other Parties upon request on all such matters, as well as on those subject to the reporting obligation under paragraph 3.

Article 10-04. National Treatment.

1. Each Party shall accord to services, as well as to service suppliers of another Party, treatment no less favorable than that accorded, in like circumstances, to its services or service suppliers.

2. Treatment accorded by a Party under paragraph 1 means, with respect to a state or department, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or department to service suppliers of the Party of which it is a member.

Article 10-05. Most Favored Nation Treatment.

1. Each Party shall accord to services and service suppliers of another Party treatment no less favorable than that accorded, in like circumstances, to services and service suppliers of any 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 countries with which it has a land border for the purpose of facilitating trade, limited to contiguous border areas, in services that are produced and consumed locally.

Article 10-06. Local Presence Not Mandatory.

No Party shall require a service supplier of another 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.

Article 10-07. Consolidation of Measures.

1. No Party shall increase the degree of non-conformity of its existing measures with respect to Articles 10-04 through 10-06. Any reform of these measures shall not diminish the degree of conformity of the measure as it was in force immediately prior to the reform.

2. Within eight months of the signing of the Treaty, the Parties shall sign a Protocol consisting of two lists containing the agreements of the negotiations carried out by the Parties during those eight months.

3. Schedule 1 shall contain the sectors and subsectors that each Party shall reserve from compliance with the obligations set forth in paragraph 1.

4. Schedule 2 shall contain the federal and central measures not in conformity with Articles 10-04 to 10-06 that each Party decides to maintain.

5. Within two years after the signature of the Treaty, the Parties shall sign a Protocol in which they shall register the state and departmental measures not in conformity with Articles 10-04 to 10-06.

6. The Parties shall not be obliged to register municipal measures.

Article 10-08. Non-discriminatory Quantitative Restrictions.

1. The Parties shall endeavor to negotiate periodically, at least every two years, the release or elimination of existing

quantitative restrictions maintained at the federal or central, state or departmental level.

2. Within one year of the date of entry into force of this Agreement, the Parties shall conclude a Protocol containing the quantitative restrictions referred to in paragraph 1.

3. Each Party shall notify the other Parties of any quantitative restrictions, other than those at the municipal government level, that it adopts after the date of entry into force of this Agreement, and shall register the restriction in the Protocol referred to in paragraph 2.

4. The agreements resulting from the negotiation for the release referred to in paragraph 1 shall be recorded in Protocols.

Article 10-09. Future Release.

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 remaining restrictions inscribed in accordance with Article 10-07, paragraphs 3 to 5, and an overall balance in commitments.

Article 10-10. Release of Non-discriminatory Measures.

The Parties may negotiate the release of quantitative restrictions, licensing requirements and other non- discriminatory measures. The commitments made shall be recorded in a Protocol signed by the Parties.

Article 10-11. Reciprocity and Global Balance.

The Parties, in the negotiations referred to in Articles 10-07, 10-08 and 10-10, shall seek to reach agreements on the basis of reciprocity, aimed at achieving an overall balance in the concessions granted.

Article 10-12. Procedures.

No later than one month after the date of entry into force of this Agreement, the Parties shall jointly establish procedures for carrying out the negotiations leading to the elaboration of the Protocols referred to in Articles 10- 07, 10-08 and 10-10, as well as for the communication of the measures referred to in Articles 10-07, paragraph 6 and 10-08, paragraphs 2 and 3.

Article 10-13. Technical Cooperation.

1. The Parties shall, within twenty-four months of the entry into force of this Agreement, establish a system to provide service suppliers with information concerning their markets with respect to:

a) the commercial and technical aspects of the supply of services; b) the possibility of obtaining technology in the area of services; and c) those aspects that the Commission considers pertinent on this subject.

The Commission shall recommend to the Parties the adoption of the measures necessary for due compliance with the provisions of paragraph 1.

Article 10-14. Granting of Licenses and Certificates.

1. In order to ensure that any measures that a Party adopts or maintains with respect to licensing or certification requirements and procedures for nationals of another Party do 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 capacity and aptitude to provide a service;

b) are not more burdensome than necessary to ensure the quality of a service; and c) do not constitute a disguised restriction on the cross-border supply of a service.

2. When a Party revalidates or recognizes, unilaterally or by agreement with another country, licenses or certificates obtained in the territory of another Party or of any non-Party:

a) nothing in Article 10-05 shall be construed to require that Party to revalidate or recognize education or studies, licenses or certificates or degrees obtained in the territory of another Party; and

b) the Party shall provide to any other Party adequate opportunity to demonstrate the reasons why education or studies,

licenses, certificates or diplomas obtained in the territory of that Party should likewise be revalidated or recognized, or to negotiate or conclude an agreement having equivalent effect.

3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any nationality or permanent residence requirements it maintains for the granting of licenses, certificates or qualifications to professional service suppliers of another Party. Where a Party fails to comply with this obligation with respect to a particular sector, any other Party shall, in the same sector and for the same period of time as the Party in default, have as its sole remedy the right to:

a) maintain a requirement equivalent to that included in the list referred to in article 10-07, paragraph 5.

b) reestablish:

(i) any such requirements at the central or federal level that it has eliminated pursuant to this article; or

(ii) any such requirements at the state or departmental level that had been in effect on the date of entry into force of this Agreement, by notice to the Party in default.

4. The annex to article 10-02 establishes procedures for the recognition of studies or education and experience as well as other rules and requirements governing professional service providers.

Article 10-15. Denial of Benefits.

A Party may, after notice and consultations, deny the benefits under this Chapter to a service supplier of another Party, when it determines that the service is being supplied by an enterprise that does not carry out substantial business activities in the territory of either Party and that, in addition, is owned or controlled by persons of a non- Party.

Chapter XI. Telecommunications

Article 11-01. Definitions

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

intra-corporate communications: telecommunications by means of which a company communicates within itself or with its subsidiaries, branches and, according to the domestic laws and regulations of each Party, with its affiliates, or these communicate with each other. For such purposes, the terms subsidiaries, branches and, as the case may be, affiliates shall be interpreted in accordance with the definition of the Party concerned. Intra- corporate communications do not include commercial or non-commercial services provided to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers and in general to separate legal or juridical persons.

public telecommunications transport network: the physical infrastructure that enables the provision of public telecommunications services.

value-added services: telecommunication services that employ computerized processing systems that act on the format, content, code, protocol or similar aspects of the user's transmitted information, creating a new service different from the basic service and, to this extent, providing the customer with additional, different or restructured information; or involving the user's interaction with stored information.

public telecommunications transport service: any telecommunications transport service that a Party expressly or in fact provides that is offered to the general public. Such services may include telegraph, telephone, telex, bearer service and data transmission, which typically involve the real-time transmission of customer- supplied information between two or more points without any end-to-end change in the form or content of that information.

telecommunications: any transmission, emission or reception of signs, signals, writings, images, sounds or information of any nature by wire, radioelectricity, optical means or other electromagnetic systems.

Article 11-02. General Principles.

1. The Parties acknowledge:

a) the right of each of them to regulate the supply of services in its territory, and to establish new regulations in this respect, in order to achieve the objectives of its national policy;

b) the specific characteristics of the telecommunications services sector and, in particular, its dual function as an

independent sector of economic activity and a fundamental means of supporting other economic activities.

Article 11-03. Scope of Application.

1. This chapter applies to the measures of each Party:

a) for the provision of value-added telecommunication services, under the terms established in Article 11-05;

b) affecting access to public telecommunications transport networks and services and the use thereof by value added service providers;

c) that it adopts or maintains relating to the standardization of connection of terminal or other equipment or systems to public telecommunications networks.

2. This Chapter does not apply to any measure that a Party adopts or maintains relating to the broadcasting or cablecasting of radio and television programming, or to the supply of basic telecommunications services.

3. Nothing in this chapter shall be construed to mean:

(a) to require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services;

(b) to require a Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services that are not offered to the general public, or to require any person to do so;

(c) prevent a Party from prohibiting persons operating private networks from using such a network to supply public telecommunications networks or services to third persons;

(d) oblige a Party to require any person that broadcasts or distributes radio or television programs by cable to provide its broadcasting or cable distribution infrastructure as a public telecommunications network.

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

Article 11-04. Access to and Use of Public Telecommunications Transport Networks and Services.

1. Each Party shall ensure that any service supplier of another Party is granted, on reasonable and non- discriminatory terms and conditions, in accordance with the rules established in the Party concerned, access to and use of public telecommunications transport networks and services for the supply of value- added services. This obligation shall be fulfilled, inter alia, through the application of paragraphs 2 to 9.

2. Each Party shall endeavor to ensure that pricing for access to and use of public telecommunications transport networks and services is cost-based;

3. Each Party shall ensure that service providers of other Parties have access to and use of any public telecommunications transport network or service offered within or across its borders, including private leased circuits. To this end, each Party shall ensure, without prejudice to paragraphs 7 and 8, that such suppliers are permitted:

a) purchase or lease and connect the terminal equipment or other equipment interfacing with the network and necessary to provide the provider's services;

b) use the operating protocols chosen by the service provider for the provision of any service that is not necessary to ensure the availability of telecommunication transport networks and services to the general public.

4. Nothing in paragraphs 2 and 3 shall be construed to prevent cross-subsidization between public telecommunications transport services.

5. Each Party shall ensure that persons of another Party may have access to and use of public telecommunications networks or services for the transmission of 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 machine-readable form in the territory of any Party provided that they are for private and exclusive use, without the provision of services to third parties and by making the international connection through entities authorized to provide international basic services.

6. Notwithstanding paragraph 5, the Parties may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade in services.

7. Taking into account that access to and use of public telecommunications transport networks and services does not involve authorization to supply these services and that these services require authorization in all cases, each Party shall ensure that no conditions are imposed on users for access to and use of public telecommunications transport networks or services other than those necessary for:

a) to safeguard the public service responsibilities of public telecommunications service providers or telecommunications networks, in particular their ability to make their networks or services available to the general public;

b) to protect the technical integrity of public telecommunication networks or services; and

c) ensure that service suppliers of the other Parties only supply value-added services when they are permitted to do so in accordance with the commitments set out in this Chapter.

8. Inthe event that they meet the criteria set forth in paragraph 7, the conditions for access to their networks and services may include the following:

a) restrictions imposed on the resale or shared use of such services;

b) the requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

c) requirements, when necessary, for the interoperability of such services and to promote the achievement of the objectives set forth in Article 11-08, paragraph 2;

d) the approval of terminal or other equipment interfacing with the network and technical requirements relating to the connection of such equipment to such networks;

e) restrictions imposed on the interconnection of private, leased or proprietary circuits with such networks or services, or with circuits leased by another service provider; or

f) communication, registration or licensing procedures.

9. Notwithstanding paragraphs 1 through 8, a Party may impose conditions on access to and use of public telecommunications transport networks and services that are reasonable, non-discriminatory and necessary to strengthen its domestic telecommunications infrastructure and its capacity to supply telecommunications services and to increase its participation in international trade in such services.

Article 11-05. 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 in the region, the Parties shall 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 procedures it adopts or maintains for granting licenses, permits, registrations or communications relating to the supply of these services are transparent and non-discriminatory and that applications are processed expeditiously; and

b) the information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial and technical capability to commence the provision of the service and that the applicant's services and terminal or other equipment comply with the technical standards or regulations applicable in the Party.

3. No Party shall require a supplier of these services:

a) to provide them to the general public, when they have been contracted by specific users and under defined technical conditions, or or oriented to them;

b) justify their rates in accordance with their costs; c) interconnect its networks with any particular customer or network; or

d) satisfy any particular technical standard or regulation, except for connection to a public telecommunications network, in which case the relevant recommendations of the International Telecommunication Union shall be taken into account.

4. Each Party may require the registration of a fee to:

a) aservice provider, for the purpose of correcting a practice of that service provider that the Party has found in a particular case to be anti-competitive, in accordance with its national law; or

b) a monopoly, to which the provisions of article 11-07 apply.

Article 11-08. Measures Relating to Standardization.

1. Each Party shall ensure that measures relating to standardization that relate to the connection of terminal or other equipment or system to public telecommunications networks, including those measures that relate to the use of test and measurement equipment for the conformity assessment procedure, include at least those necessary to:

a) avoid technical damage to public telecommunication networks;

b) avoid technical interference with or impairment of public telecommunication services;

c) avoid electromagnetic interference and ensure compatibility with other uses of the electromagnetic spectrum;

d) prevent malfunctioning of the billing equipment; or

e) to ensure the security of the user and his access to and interworking with public telecommunication networks or services.

2. The Parties may establish the requirement of approval for terminal equipment or other systems and equipment, when these are intended to be connected to the public telecommunications network, provided that the approval criteria are compatible with the provisions of paragraph 1.

3. The user's terminal equipment may be approved or may be required to be approved, according to the conditions applicable for connection to the Party's public telecommunications network, in accordance with the provisions of this Article. Terminal equipment approved by an authority recognized by the Party concerned shall be sufficient and no Party shall require additional authorization on the approval aspects.

4. Each Party shall ensure that the terminal points of public telecommunications networks are defined on a reasonable and transparent basis.

5. Each Party, in relation to the approval:

a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications for conformity assessment are processed expeditiously;

b) allow any technically qualified entity registered in the Parties to perform the required testing of terminal equipment or other equipment or system to be connected to the public telecommunications network, in accordance with the Party's evaluation procedures, without prejudice to the right of the Party to review the accuracy and completeness of the test results; and

c) ensure that the measures it adopts or maintains to authorize persons acting as agents of suppliers of telecommunications equipment to the Party's competent conformity assessment bodies are non-discriminatory.

6. Within twelve months after the entry into force of this Agreement, each Party, through the High Level Telecommunications Group of the Group of Three, shall adopt, among its conformity assessment procedures, the necessary provisions to accept the results of tests performed, based on its established standards and procedures, by laboratories authorized and recognized by competent entities, which are located in the territory of another Party.

7. The Parties, through the High Level Telecommunications Group of the Group of Three, shall design the work program for the implementation of the guidelines contained in this Chapter and established in accordance with the provisions of this Article.

Article 11-07. Monopolies.

1. Where a Party maintains or establishes a monopoly to provide public telecommunications networks and services, and that monopoly competes, directly or through affiliates, in the manufacture or sale of telecommunications goods, in the provision of value-added services, or other telecommunications services, the Party shall ensure that the monopolist does not use its monopoly position to engage in anti-competitive practices in those markets, either directly or through dealings with its affiliates, in a manner that adversely affects a person of another Party. Prohibitions may relate to cross-subsidies

between enterprises, conduct leading to abuse of dominance, and discriminatory access to public telecommunications networks and services.

2. Each Party shall adopt or maintain effective measures to prevent the anticompetitive 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 and use of its telecommunications networks or services on terms and conditions no less favorable than those it grants to itself or its affiliates; or

d) rules to ensure timely disclosure of technical changes to public telecommunications networks and their interfaces.

3. Each Party shall inform the other Parties of the measures referred to in paragraph 2.

Article 11-08. Relationship with International Organizations and Agreements.

1. The Parties shall make their best efforts to encourage the performance of regional and subregional organizations and promote them as forums for the development of telecommunications in the region.

2. The Parties, recognizing the importance of international standards in achieving global compatibility and interoperability of telecommunication networks or services, undertake to promote the application of standards issued by competent international bodies, such as the International Telecommunication Union and the International Organization for Standardization.

3. In the case of particular or joint technological developments of the Parties, mechanisms shall be established for the application of regional standards related to such developments.

Article 11-09. Technical Cooperation.

1. In order to stimulate the development of interoperable telecommunications infrastructure and services, the Parties shall cooperate in the exchange of technological information, in the development of human resources in the sector, as well as in the creation and development of business, academic and intergovernmental exchange programs.

2. The Parties shall encourage and support cooperation in telecommunications at the international, regional and subregional levels.

Article 11-10. Transparency.

Each Party shall make available to the public and to the other Parties information on measures relating to access to and use of public telecommunications networks or services, including measures relating to:

a) rates and other terms and conditions of service;

b) specifications of the technical interfaces with these services and networks;

c) information on the authorities responsible for the development and adoption of standardization measures affecting such access and use;

d) conditions applicable to the connection of terminal or other equipment to the public telecommunications network;

e) any communication, permit, registration or licensing requirements.

Article 11-11. Denial of Benefits.

A Party may deny the benefits of this chapter:

a) to a person of another Party that supplies value-added services, if it determines that the service and the facilities incidental to its supply are located in the territory of a country that is not a Party to this Agreement; or

b) to a service supplier that is a juridical or legal person, if it establishes that the ownership or control of that person is ultimately vested in persons of a non-Party.

Article 11-12. Schedule for the Release of Value-added Services.

1. For value added services, the provisions of Chapter X shall apply. 2. The release of value-added services will be based on the following schedule:

a) each Party shall, upon entry into force of this Agreement, permit:

i) the cross-border provision of value-added services, with the exception of videotext services and enhanced packet-switched services;

ii) investment, up to 100%, by natural or juridical persons, including state enterprises of another Party, in enterprises established or to be established in its territory for the supply of value-added services, with the exception of videotext services and enhanced packet-switched services;

b) the limitations established in subparagraph a), with respect to videotext services and enhanced packet-switched services, shall be eliminated as of July 1, 1995.

Article 11-13. Other Provisions.

Subject to the analysis of the integration achieved in value-added services, the Parties shall, within two years following the entry into force of this Agreement, hold appropriate consultations to determine the deepening and broadening of the coverage of the free trade area in telecommunications services.

Chapter XII. Financial Services

Article 12-01. Definitions.

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

enterprise: any entity incorporated or organized under applicable law, whether or not for profit and whether privately or governmentally owned, including companies, partnerships, sole proprietorships, joint ventures or other associations.

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 financial intermediary or other enterprise that is authorized to transact financial 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 another Party: a financial institution located in the territory of a Party that is controlled by persons of another Party.

investment:

a) acompany;

b) shares of a company;

c) an interest in an enterprise that entitles the owner to share in the income or profits of the enterprise;

d) an interest in a company that entitles the owner to participate in the equity of that company in a liquidation;

e) real estate or real property or other property, tangible or intangible, acquired or used for the purpose of economic benefit or for other business purposes; and

f) benefits derived from allocating capital or other resources to the development of an economic activity in the territory of another Party, in accordance with, inter alia:

i) contracts that involve the presence in the territory of another Party of assets of an investor, such as concessions, construction contracts and turnkey contracts; or

ii) contracts in which the consideration depends substantially on the production, revenues or profits of an enterprise.

Investment shall not be understood as an investment: a) 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 another Party; or

ii) the extension of credit in connection with a commercial transaction, such as trade financing; or

b) any other pecuniary claim that does not involve the types of rights set forth in the subparagraphs of the definition of investment;

c) a loan granted by a financial institution or a debt security owned by a financial institution, unless it is a loan to a financial institution or a debt security of a financial institution that is treated as equity for regulatory purposes by the Party in whose territory the financial institution is located.

disputing investor: an investor of a Party that makes a claim under the rules relating to the settlement of disputes between a Party and an investor of another Party.

investment of an investor of a Party: an investment owned or controlled directly or indirectly by an investor of that Party in the territory of another Party.

investment of a non-Party: the investment of an investor that is not 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, is making or has made an investment in the territory of another Party.

measure: any action, act or decision, taken or which may be taken by a Party whether in the form of law, regulation, rule, procedure, administrative decision or provision, requirement or practice, or in any other form.

new financial service: a financial service not provided in the territory of the Party that is provided in the territory of another Party, and includes 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 bodies: any non-governmental entity, including any stock or futures exchange or market, clearinghouse or any other association or organization exercising proprietary or delegated regulatory or supervisory authority over financial service providers or financial institutions.

person of a Party: a national or an enterprise of a Party, does not include a branch of an enterprise of a non- Party.

cross-border provision of financial services or cross-border trade in financial services: a) the supply of a financial service from the territory of a Party into the territory of another Party; (b) in the territory of a Party by a person of that Party to a person of another Party; or c) by a person of a Party in the territory of another Party.

financial service supplier of a Party: a person of a Party engaged in the business of supplying any financial service in the territory of the Party.

cross-border financial service supplier of a Party: a financial service supplier of a Party seeking to supply or supplying financial services through the cross-border supply of such services.

financial service: a service of a financial nature, including insurance, reinsurance, and any service related or auxiliary to a service of a financial nature.

Article 12-02. Scope of Application.

1. This chapter refers to a Party's measures relating to:

a) financial institutions of another Party;

b) investors of another Party and investments of such investors in financial institutions in the territory of the Party; and

c) cross-border trade in financial services.

2. This chapter does not apply to:

a) activities or services that are part of public retirement plans or public social security systems;

b) the use of financial resources owned by the Party;

c) other activities or services on behalf of, or with the guarantee of, the Party or its public entities.

3. Each Party undertakes to release progressively and gradually, through successive negotiations, any financial restrictions or reservations for the purpose of giving effect to economic complementation between them. In the event of any inconsistency between the provisions of this Chapter and any other provision of this Agreement, the provisions of this Chapter shall prevail to the extent of the inconsistency.

4. Articles 17-08 and 17-13 of Chapter XVII are an integral part of this chapter.

Article 12-03. Self-regulated Organizations.

Where a Party requires a financial institution or cross-border financial service provider of another 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 bring that body into compliance with the obligations of this Chapter.

Article 12-04. Right of Establishment.

1. The Parties recognize the principle that investors of each Party engaged in the business of supplying financial services in the territory of that Party should be permitted to establish a financial institution in the territory of another Party, by whatever means of establishment and operation the latter may permit.

2. A 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 the degree of non-conformity of its measures relating to cross-border trade in financial services by cross-border financial service suppliers of another Party after 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 another Party located in the territory of that other Party or of another Party. This does not oblige a Party to allow such service suppliers to do business or advertise in its territory. Subject to paragraph 1, each Party may define "doing business" and "advertising" for the purposes of this obligation.

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

Article 12-06. National Treatment.

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

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

3. In similar circumstances, under Article 12-05 where a Party permits the cross-border supply of a financial service, it shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers with respect to the supply of such service.

4. Treatment by a Party of financial institutions and cross-border financial service suppliers of another Party, whether identical to or different from that accorded to its own institutions or service suppliers in like circumstances, is consistent with paragraphs 1 to 3 if it provides equal opportunity to compete.

5. A Party's treatment does not provide equal opportunity to compete if, in like circumstances, it would disadvantage the financial institutions and cross-border financial service suppliers of another 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 another Party, financial institutions of another Party, investments of investors in financial institutions and cross-border financial service suppliers of another Party, in like circumstances, treatment no less

favorable than that accorded to investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of another Party or of a non-Party.

Article 12-08. Recognition and Harmonization.

1. In applying the measures covered by this Chapter, a Party may recognize the prudential measures of another Party or a non-Party. Such recognition may be granted unilaterally, achieved through harmonization or other means, or on the basis of an agreement or arrangement with the other Party or the non-Party.

2. A Party granting recognition of prudential measures pursuant to paragraph 1 shall provide appropriate opportunities for any other Party to demonstrate that circumstances exist whereby there are or will be equivalent regulations, 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 in accordance with paragraph 1 and the circumstances set out in paragraph 2 exist, the Party shall provide adequate opportunity for another Party to negotiate accession to the agreement or arrangement, or to negotiate a similar agreement or arrangement.

Article 12-09. Exceptions.

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable prudential measures of a financial nature for such reasons as:

a) protect policyholders, as well as investors, depositors or other creditors, policyholders or beneficiaries or persons who are creditors of fiduciary obligations owed by a financial institution or a cross-border financial services provider;

b) to maintain the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and

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

2. Nothing in Chapters X, XI, XIII, XVI, XVII of this Agreement applies to nondiscriminatory measures of general application adopted by public entities responsible for adopting or conducting monetary or related credit or exchange rate policies. This paragraph shall not affect a Party's obligations under Articles 17- 04, 17-07 and 12-18.

3. Notwithstanding any other provision of this Agreement that permits a Party to restrict transfers, and notwithstanding Article 12-18, paragraphs 1 through 3, a Party may prevent or limit transfers by a financial institution or a cross-border financial service supplier to, or for the benefit of, an affiliate or a person related to that institution or that 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.

4. Article 12-06 shall not apply to the granting of exclusive rights by a Party to a financial institution to supply one of the financial services referred to in Article 12-02, paragraph 2(a).

Article 12-10. Transparency.

1. Each Party shall ensure that any measure it adopts on matters related to this Chapter is formally published or otherwise made known in writing in a timely manner to those to whom it is addressed.

2. The regulatory authorities of each Party shall make available to interested parties the requirements for completing an application for the supply of financial services.

3. At the request of the applicant, the regulatory authority shall inform him/her of the status of his/her application. When the regulatory authority requires additional information from the applicant, it shall inform the applicant without undue delay.

4. The regulatory authorities of each Party shall, within 120 days, issue an administrative ruling on 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 another Party. The authority shall, without delay, communicate the determination to the interested party. 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 120 days, the regulatory authority shall inform the person concerned without undue delay and thereafter endeavor to issue the determination within a reasonable period of time.

5. Nothing in this chapter obligates a Party either to disclose or to allow access to:

a) information relating to the financial affairs and accounts of individual customers of financial institutions or of cross-border financial service providers; or

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

6. Each Party shall maintain or establish one or more consultation centers, within 360 days after entry into force of this Agreement, to respond promptly 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 Committee.

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the competent authority of that Party.

2. The Committee:

a) supervise the implementation of this chapter and its further development;

b) consider the financial services aspects submitted to it by a Party;

c) participate in dispute settlement procedures in accordance with articles 12-19 and 12-20;

d) facilitate the exchange of information among supervisory authorities and cooperate, in the area of prudential regulatory advice, in seeking the harmonization of regulatory frameworks and other policies when deemed appropriate.

3. The Committee shall meet at least once a year to evaluate the operation of this Treaty with respect to financial services.

Article 12-12. Consultations.

1. Each Party may request consultations with another Party with respect to any matter related to this Agreement affecting financial services. The other Party shall give sympathetic consideration to such a request. The consulting Parties shall make the results of their consultations known to the Committee at its meetings.

2. Officials of the competent authorities of the Parties shall participate in the consultations provided for in this Article.

3. Each Party may request that the regulatory authorities of another Party intervene 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 act in a manner that would interfere with particular regulatory, supervisory, administrative or enforcement matters.

5. In cases where, for supervisory purposes, a Party needs information on a financial institution in the territory of another Party or on cross-border financial service providers in the territory of another Party, the Party may approach the responsible regulatory authority in the territory of the other Party to request the information.

Article 12-13. New Financial Services and Data Processing.

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those which that Party permits its financial institutions to provide under its law in like circumstances. 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 authorization may only be denied for prudential reasons.

2. Each Party shall permit financial institutions of another Party to transfer for processing information into or out of the territory of the Party, using any means authorized therein, when necessary to carry out the ordinary business activities of those institutions.

Article 12-14. Senior Management and Management Bodies.

1. No Party may require financial institutions of another Party to employ personnel of any particular nationality for senior corporate management or other key positions.

2. No Party may require that the board of directors or the board of trustees of a financial institution of another 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. Preparation of Reservations.

1. The Parties shall draw up, within eight months after the entry into force of this Treaty, a Protocol in which each Party shall include reservations to Articles 12-04 to 12-07 and 12-14.

2. Such reservations shall include measures with respect to which no Party shall increase the degree of nonconformity with those Articles as of the date of entry into force of this Agreement. Any amendment of any such measure shall not diminish the degree of conformity of the measure as in effect immediately prior to the amendment;

3. The reservations referred to in paragraph 1 shall contain the following elements:

a) sector refers to the sectors on which each Party has adopted a reservation;

b) sub-sector refers to the specific sector in which the reserve has been taken;

c) industrial classification refers to the activity covered by the reservation, in accordance with national industrial classification codes, where applicable;

d) type of reservation specifies the obligation from among those mentioned in paragraph 1, on which a reservation is taken;

e) level of government indicates the level of government that maintains the measure on which the reservation is maintained;

f) measures identifies the measures that apply to the sector, subsector or activities covered by the reserve;

g) description describes the coverage of the sector, subsector or activities covered by the reserve.

h) phasing out refers to commitments, if any, for liberalization after the date of entry into force of this Agreement.

4. In interpreting a reservation, all elements of the reservation will be considered.

5. Where a Party has established, in Chapters X, XI, XIII, XVI and XVII of this Agreement, a reservation to matters relating to the right of establishment, cross-border trade, national treatment, most-favored- nation treatment, and senior management and governing bodies, the reservation shall be deemed to be made to Articles 12-04 through 12-07 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 the benefits under this Chapter to a financial service supplier of another Party or a cross-border financial service supplier of another Party, after notice 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 either Party and that 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 another 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 under a contract to which an investor or its investment is a party;

d) payments made in accordance with the article relating to expropriation and compensation; and

e) payments arising from the settlement of disputes between a Party and an investor of another Party.

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 the provisions of 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 another Party.

4. Notwithstanding the provisions of paragraphs 1 and 2, each Party may prevent transfers by equitable, 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 currency transfers or other monetary instruments;

e) guarantee of compliance with the rulings in a contentious proceeding.

5. Notwithstanding paragraph 1, each Party may restrict transfers of earnings in kind in circumstances where it would otherwise restrict such transfers under this Chapter.

6. Each Party may retain laws and regulations providing for income and supplementary taxes by such means as withholding taxes applicable to dividends and other transfers, provided that they are not discriminatory.

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 in Article 17-07, paragraph 1, when:

a) the application of any provision of this Chapter or Chapter XVII would result in a serious economic and financial disruption in the territory of the Party, which 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. The Party that suspends or intends to suspend benefits under paragraph 1 shall inform the other Parties as soon as possible:

a) the serious economic and financial disruption caused by the application of this chapter or article 17-07, paragraph 1, or, as the case may be, the nature and extent of the serious threats to, or serious difficulties faced by, its balance of payments;

b) the economic and foreign trade situation of the Party;

c) the alternative measures it has available to correct the problem; and

d) the economic policies it adopts to address the problems mentioned in paragraph 1, as well as the direct relationship between such policies and the solution thereof.

3. The measure adopted or maintained by the Party, at all times:

a) avoid unnecessary damage to the economic, commercial and financial interests of the other Parties;

b) shall not impose greater burdens than are necessary to meet the difficulties which cause the measure to be adopted or maintained;

c) shall be temporary and shall be progressively released to the extent that 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 strive to be consistent with internationally accepted criteria.

4. The Party that adopts a measure to suspend benefits contained in this Agreement shall inform the other Parties of the evolution of the events that gave rise to the adoption of the measure.

5. For the 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 applies to the settlement of disputes arising between the Parties with respect to this Chapter.

2. The Financial Services Committee shall establish by consensus a list of up to fifteen individuals, including up to five individuals from each Party, who have the necessary skills and qualifications to act as arbitrators in disputes under this Chapter. The members of this roster shall, in addition to satisfying the requirements set forth in Article 19-08, paragraph 2(b), (c) and (d), have specialized knowledge in financial matters or 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 referred to in Article 19-09, the list referred to in paragraph 2 shall be used, unless the disputing Parties agree that individuals not included in that list may serve on 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 Agreement, where the suspension of benefits referred to in Article 19-16 applies, and the measure affects:

a) only to the financial services sector, the complaining Party may suspend benefits only in that sector;

b) to 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 services, the complaining Party may not suspend benefits in the financial services sector.

Article 12-20. Disputes between an Investor and a Party.

1. Except as provided in this Article, claims brought by a disputing investor against a Party in connection with obligations under this Chapter shall be resolved in accordance with the provisions of Chapter XVII Section B and the rules of procedure contained in the Annex to Article 17-16.

2. When the Party against which the claim is made invokes any of the exceptions referred to in article 12- 09, the following procedure shall be observed:

(a) the arbitral tribunal shall refer the matter to the Financial Services Committee for decision. The tribunal may not proceed until it has received a decision of the Committee under the terms of this Article or 60 days have elapsed from the date of receipt by the Committee;

(b) upon receipt of the matter under subparagraph (a), the Committee shall decide whether and to what extent the Article 12-09 exception invoked is a valid defense to the investor's claim and shall transmit a copy of its decision to the arbitral tribunal and to the Commission. That decision shall be binding on the tribunal.

Chapter XIII. Temporary Entry of Business Persons

Article 13-01. Definitions

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

immigration authorization: the Mexican immigration document and the Colombian and Venezuelan visa.

labor certification: any procedure prior to immigration authorization that involves a government permit or authorization related to the labor market.

temporary entry: the entry of a business person of one Party into the territory of another Party, without the intention of establishing permanent residence.

national: a natural person who has the nationality of a Party in accordance with its legislation.

business person: a national of a Party who engages in trade in goods or services, or in investment activities, in accordance with the categories referred to in the Annex to Article 13-04.

Article 13-02. General Principles.

The provisions of this chapter are intended to facilitate the temporary entry of business persons based on the principle of reciprocity and considering the need to establish transparent criteria and procedures for such purpose. All this as an instrument to ensure a preferential trade relationship between the Parties. This chapter reflects the need to guarantee border security and to protect the work of their nationals and permanent employment in their respective territories.

Article 13-03. General Obligations.

1. Each Party shall apply, in accordance with Article 13-02, the measures relating to this Chapter 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 develop and adopt common criteria, definitions and interpretations for the application of this chapter.

Article 13-04. Authorization of Temporary Entry.

1. In accordance with the provisions of this Chapter, including those contained in the Annex to Article 13- 04, each Party shall authorize the temporary entry of business persons who comply with the immigration regulations in force, with other applicable measures relating to public health and safety, as well as those relating to national security.

2. A Party may deny immigration employment authorization to a business person when his temporary entry would adversely affect his employment:

a) the settlement of any labor dispute existing at the place where she is employed or to be employed; or

b) the employment of any person involved in such conflict. 3. Where a Party denies immigration employment authorization in accordance with paragraph 2, that Party: a) communicate to the business person concerned the reasons for the refusal;

b) promptly communicate the reasons for the refusal to the Party whose national is refused entry.

4. No Party may adopt or maintain numerical restrictions on the migratory authorizations contemplated in this Chapter.

5. Within three months following the entry into force of this Agreement, the Parties shall exchange the following lists of companies, which shall be permanently updated through official communications from the competent governmental bodies:

a) trilateral list of companies that includes the companies of each of the Parties;

b) trilateral register that includes companies of one Party that have branches, subsidiaries or affiliates in the territory of another Party and transnational companies with branches, subsidiaries or affiliates in the territory of more than one Party.

6. Each Party shall limit the amount of fees for processing applications for temporary entry to the approximate cost of processing services rendered.

7. Atthe date of entry into force of the Treaty, each Party shall draw up a list of the migration measures in force in its territory.

Article 13-05. Availability of Information.

1. Each Party, in addition to the provisions of Article 21-02 of Chapter XXI:

(a) provide the other Parties with materials to enable them to become acquainted with the measures relating to this Chapter; and

(b) within six months of the entry into force of this Agreement, prepare, publish and make available, both in its territory and in the territories of the other Parties, a consolidated document containing material explaining the requirements and procedures for temporary entry.

2. Each Party shall compile, maintain and make available to the other Parties, in accordance with its domestic legislation, information relating to the granting of immigration authorizations issued in accordance with this Chapter. This compilation shall include information specific to each occupation, profession or activity.

Article 13-06. Working Group.

1. The Parties create a Temporary Entry Working Group, composed of representatives of each Party, including migration officials.

2. The Working Group shall meet at least once a year to review:

a) the application and administration of this chapter;

b) the development of measures to extend facilities for the temporary entry of business persons in accordance with the principle of reciprocity;

c) exemption from proof of labor certification or procedures having similar effect, for the spouse of a person who has been granted temporary entry under Sections B, C or D of the Annex to Article 13-04, when applying for work authorization; and

d) proposed amendments or additions to this chapter.

Article 13-07. Settlement of Disputes.

1. The Parties may not initiate the procedures provided for in Article 19-06 of Chapter XIX, with respect to a refusal of temporary entry authorization, nor with respect to any particular case covered by Article 13- 03, unless:

a) the matter relates to a recurring practice; and

b) the affected business person has exhausted the administrative remedies available to it with respect to that particular matter.

2. The appeals mentioned in paragraph 1, subparagraph b), shall be considered exhausted when the competent authority has not issued a final resolution within six months from the initiation of the administrative procedure, and the issuance of the resolution has not been delayed for causes attributable to the business person concerned.

Article 13-08. Relationship with other Chapters.

Except as provided in this Chapter and Chapters I, Il, XIX, XX! and XXIII, nothing in this Agreement shall impose any obligation on the Parties with respect to their migration measures.

Annex to Article 13-04. Business persons

Section A. Business Visitors

1. Each Party shall authorize the temporary entry of a business person who, at the prior request of an enterprise registered in the trilateral registry referred to in article 13-04, paragraph 5, subparagraph a), intends to carry out any activity mentioned in the appendix to this section, without requiring labor certification or procedures of similar effect, provided that he complies with the immigration measures in force, applicable to the temporary entry and exhibits:

a) proof of their status as a national of a Party;

b) a prior request from an enterprise established in the territory of one of the Parties; or documentation evidencing that it will undertake such activities and indicating the purpose of its entry; and

c) in the case of the provision of a service, proof of the international character of the business activity proposed to be carried out and that the business person does not intend to enter the local labor market, demonstrating that:

(i) the principal source of remuneration for that activity is outside the territory of the Party authorizing temporary entry; and

(ii) the principal place of business and where most of the profits are obtained are outside this territory.

2. The Party will normally accept a statement as to the principal place of business and the place of earning profits. Where the Party requires additional verification, it will normally consider a letter from the employer registered in the trilateral register of companies stating these circumstances to be sufficient evidence.

3. Each Party may authorize the temporary entry of a business person who intends to carry out an activity other than those listed in the Appendix to this Annex, without requiring labor certification or procedures of similar effect, on terms no less favorable than those provided for in the current provisions of the measures listed in the list referred to in Article 13-04,

paragraph 7, provided that such business person also complies with the immigration measures applicable to temporary entry.

4. Notwithstanding paragraphs 1 through 3, a Party may require a business person requesting temporary entry under this section to obtain, prior to entry, immigration authorization.

Section B. Investors

1. Each Party shall authorize temporary entry and grant the corresponding documentation to a business person who intends to establish, develop, manage or provide key technical, supervisory, executive or essential skill advisory or services to carry out or manage an investment in which the business person or his enterprise has committed, or is in the process of committing, a substantial amount of capital, in accordance with the domestic legislation of each Party, provided that the business person also complies with the immigration measures applicable to temporary entry.

2. No Party may:

(a) require proof of labor certification or other procedures having similar effect, as a condition for authorizing temporary entry under paragraph 1; or

(b) impose or maintain numerical restrictions on temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may examine, within a peremptory time, the investment proposal of a business person to assess whether the investment complies with the applicable legal provisions.

4. Notwithstanding paragraph 2, a Party may require a business person requesting temporary entry under this section to obtain, prior to entry, immigration authorization.

Section C. Transfer of Personnel Within a Company

1. Each Party shall authorize temporary entry and issue supporting documentation to a business person employed by a company registered in the trilateral register of companies referred to in article 13-04, paragraph 5, subparagraph b), who intends to perform managerial, executive or specialized knowledge functions in that company or in one of its subsidiaries or affiliates, provided that he/she complies with the immigration measures in force applicable to temporary entry. The Party may require that the business person has been continuously employed by the enterprise for 6 months during the year immediately preceding the date of submission of the application.

2. No Party may require proof of labor certification or other procedures of similar effect as a condition for authorizing temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person requesting temporary entry under this section to obtain, prior to entry, immigration authorization.

Section D. Professionals

1. Each Party shall authorize temporary entry and issue supporting documentation to a business person who intends to carry out activities at the professional level, at the prior request of an enterprise registered in any of the trilateral lists of enterprises referred to in Article 13-04, paragraph 5, in the field of a profession indicated in the list referred to in paragraph 4 and based on the trilateral list of educational institutions referred to in paragraph 5, when the business person, in addition to complying with the immigration requirements in force, applicable to temporary entry, exhibits:

a) proof of their status as a national of a Party; and

b) documentation evidencing, based on the trilateral business registers, that the business person will undertake such activities and stating the purpose of its entry.

2. A Party may require a business person requesting temporary entry under this section to obtain, prior to entry, immigration authorization.

3. The temporary entry of a professional does not imply the recognition of titles or certificates, nor the granting of licenses for professional practice.

4. The Temporary Entry Working Group shall establish a list of professional activities to which this Annex shall apply, to be

integrated in accordance with paragraph 5, within six months of the entry into force of this Agreement.

5. The Parties shall exchange within three months following the entry into force of this Agreement their respective lists of educational institutions, and shall keep them updated through communications from the competent governmental bodies.

Appendix to Section A of the Annex to Article 13-04. Categories of Business Visitors

Research and Design

- Technical, scientific and statistical researchers conducting research independently or for an enterprise located in the territory of another Party.

Cultivation, Manufacturing and Production

- Harvesting machine owners who supervise a group of operators admitted in accordance with the applicable provisions.

- Purchasing and production personnel, at management level, who carry out commercial operations for an enterprise located in the territory of another Party.

Marketing

- Market researchers and analysts who conduct research or analysis independently or for a company located in the territory of another Party.

- Trade show and promotional staff attending trade conventions. Sales

- Sales representatives and sales agents who obtain orders or negotiate contracts for goods and services for an enterprise located in the territory of another Party, but do not deliver the goods or provide the services.

Distribution

- Transport operators that carry out transport operations of goods or passengers to the territory of a Party from the territory of another Party, or carry out loading and transport operations of goods or passengers from the territory of a Party to the territory of another Party, without carrying out in the territory of the Party from which entry is requested, loading or unloading operations of goods that are in that territory or of passengers boarding therein.

- Customs brokers who provide advisory services to facilitate the importation or exportation of goods. After-sales services

- Installation, repair, maintenance, and supervisory personnel who have the technical expertise essential to fulfill the seller's contractual obligation and who provide services, or train workers to provide such services, under a warranty or other service contract related to the sale of commercial or industrial equipment or machinery, including computer software purchased from an enterprise located outside the territory of the Party from which temporary entry is sought, during the term of the warranty or service contract.

General Services

- Management and supervisory personnel involved in business operations for an enterprise located in the territory of another Party.

- Tour bus operators entering the territory of a Party:

a) with a group of passengers on a tour bus trip that began in the territory of another Party and is to return to it;

(b) that is to pick up a group of passengers on a tourist bus tour that will take place and terminate for the most part in the territory of another Party; or

c) with a group of passengers in a tourist bus whose destination is in the territory of the Party from which temporary entry is requested, and which returns without passengers or with the group for transportation to the territory of another Party.

Definitions

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

tourist bus operator: the natural person required to operate the vehicle during the tourist trip, including any relief personnel accompanying or joining him/her at a later date.

transport operator: the natural person, other than a tour bus operator, required to operate the vehicle during the trip, including any relief personnel accompanying or joining him/her at a later date.

Chapter XIV. Technical Standards

Article 14-01. Definitions.

1. For the purposes of this chapter, the terms presented in the sixth edition of ISO/IEC Guide 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 defined differently here.

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

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, in order to enable such goods and services to be traded between the Parties.

standardization measures: standards, technical regulations or conformity assessment processes.

standard: the document approved by a recognized institution with standardization activities, which provides for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods or for services or their related methods of operation, and whose observance 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 production method.

international standard: a standardization measure, or other guide or recommendation, adopted by an international standardization body and made available to the public.

legitimate objectives: among others, ensuring the safety and protection of human, animal and plant life and health, their environment and the prevention of practices that may mislead consumers, including matters relating to the identification of goods or services, considering among other aspects, where appropriate, fundamental climatic, geographical, technological or infrastructural factors or scientific justification.

international standardizing body: a standardizing body, open to participation by the relevant bodies of at least all parties to the GATT Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission, the World Health Organization (WHO), the International Telecommunication Union (ITU), or any other body designated by the Parties.

standardizing body: a body whose standardization activities are recognized.

conformity assessment procedure: any procedure used, directly or indirectly, to determine that the relevant requirements established by technical regulations or standards have been met, including sampling, testing, inspection, evaluation, verification, conformity assurance, accreditation, certification, registration or approval, used for such purposes, but does not mean an approval process.

approval process: the registration, communication or any other mandatory administrative process for obtaining a permit for a good or service to be marketed or used for defined purposes or in accordance with established conditions.

technical regulation: a document that establishes the characteristics of goods or their related processes and production methods, or 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 method.

service: any of the services included in the framework of this Treaty, except financial services.

Article 14-02. Scope of Application.

The provisions of this Chapter apply to standardization measures, metrology and related measures of each Party that may affect, directly or indirectly, trade in goods and services between the Parties. The provisions of this Chapter do not apply to the phytosanitary and zoosanitary measures referred to in Chapter V, Section B.

Article 14-03. Scope of Obligations.

Each Party shall ensure, in accordance with its constitutional provisions, compliance with the obligations of this Chapter, in its territory at the central or federal, state or departmental and municipal levels, and shall adopt such measures in this regard as may be available to it with respect to non-governmental standardizing bodies in its territory.

Article 14-04. Reaffirmation of International Rights and Obligations.

The Parties mutually reaffirm their existing rights and obligations relating to standardization measures under the GATT and all other international treaties, including environmental and conservation treaties, to which the Parties are parties.

Article 14-05. Basic Obligations and Rights.

1. The Parties shall not 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 its standardizing measures are no more trade-restrictive than necessary for the achievement of a legitimate objective, taking into account the risks that failure to achieve that objective would create.

2. Notwithstanding any other provision of this Chapter, and in accordance with Article 14-14, paragraph 3, each Party may establish the level of protection it considers appropriate in the pursuit of its legitimate objectives regarding the safety and protection of human, animal and plant life and health; and the protection of its environment and the prevention of practices that may mislead consumers, without constituting an obstacle to trade. To this end, each Party may develop, implement and maintain standardization measures to ensure this level of protection, as well as measures to ensure the application and enforcement of such standardization measures, including the relevant approval procedures, provided that such measures do not have the purpose or effect of creating unnecessary obstacles to trade.

3. With respect to its standards-related measures, each Party shall accord to goods and service suppliers of another Party national treatment no less favorable than that accorded to like goods and service suppliers of any other country.

Article 14-06. Use of International Standards.

1. Each Party shall use as a basis for its own standardization measures, international standards in force or of imminent adoption, except when such standards do not constitute an effective or adequate means to achieve its legitimate objectives; for example, due to fundamental factors of a climatic, geographical, technological or infrastructural nature, in accordance with the provisions of this Chapter.

2. Standardization measures of a Party that conform to an international standard shall be presumed to be consistent with the provisions of article 14-05, paragraphs 1 and 3.

3. In pursuing its legitimate objectives, each Party may adopt, maintain or apply any standardization measure that achieves a higher level of protection than would have been achieved if the measure were based on an international standard due to fundamental factors of a climatic, geographical, technological or infrastructural nature, among others.

Article 14-07. Compatibility and Equivalence.

1. Recognizing the central role that standardization measures play in the promotion and protection of legitimate objectives, the Parties shall work together, in accordance with this Chapter, to strengthen the level of safety and protection of human, animal and plant life and health; of their environment; and for the prevention of practices that may mislead consumers.

2. The Parties shall make compatible, to the greatest extent possible, their respective technical regulations and conformity assessment procedures, without reducing the level of safety or protection of human, animal and plant life and health, their environment or consumers, without prejudice to the rights conferred by this Chapter on any Party and taking into account international standardization activities.

3. At the request of a Party, the other Parties shall take reasonable measures within their power to promote the compatibility of the specific standardization measures existing in their territory with the standardization measures existing in the territory of the other Parties, taking into account international standardization activities.

4. Each Party shall accept a technical regulation adopted by another Party as equivalent to its own when, in cooperation with the importing Party, the exporting Party demonstrates to the satisfaction of the importing Party that its technical regulation adequately meets the legitimate objectives of the importing Party and, if appropriate, shall revise it.

5. At the request of the exporting Party, the importing Party shall communicate to it the reasons for non- acceptance of a

technical regulation in accordance with paragraph 4.

6. Each Party shall, whenever possible, accept the results of conformity assessment procedures carried out in the territory of another Party, even if those procedures differ from its own, provided that such procedures offer a 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, and if appropriate, shall review the relevant standardization measure.

7. Prior to acceptance of the results of a conformity assessment procedure, in accordance with paragraph 6, and 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 and recommendations.

Article 14-08. Conformity Assessment.

1. The Parties recognize the desirability of achieving reciprocal recognition of their conformity assessment systems, including accreditation bodies, in order to facilitate trade in goods and services between them and undertake to work towards the achievement of this objective.

2. In addition to the provisions of paragraph 1, and recognizing the existence of differences in their conformity assessment procedures in their respective territories, the Parties shall make compatible, to the greatest extent possible, their respective conformity assessment systems and procedures so that they are mutually recognizable in accordance with the provisions of this Chapter.

3. For mutual benefit and on a reciprocal basis, each Party shall accredit, approve, license or recognize conformity assessment bodies in the territory of another Party on terms no less favorable than those granted to such bodies in its territory.

4. Each Party shall give favorable consideration to requests submitted by another Party to negotiate agreements on mutual recognition of the results of that Party's conformity assessment procedures.

5. When required to carry out any procedure for the assessment of conformity with technical regulations or standards, each Party shall have the obligation to:

a) not adopt, maintain or apply more stringent conformity assessment procedures than necessary to ensure that the good or service conforms to the applicable technical regulation or standard, taking into consideration the risks that nonconformity may create;

b) to initiate and complete such proceedings as expeditiously as possible;

c) establish a non-discriminatory order for the processing of applications;

d) publish the normal duration of each of these procedures or inform, upon request, the approximate duration of the procedure;

e) ensure that the competent body:

i) upon receipt of the application, promptly examine the documentation for completeness and inform the applicant of any deficiencies accurately and completely;

ii) as soon as possible, transmit 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) when the application is deficient, to advance the procedure as far as possible, if the applicant so requests; and

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

f) limit to what is necessary, the information that the applicant must submit to assess conformity and to determine the relevant rights;

g) to grant confidential information arising out of or in connection with the proceeding:

(i) the same treatment as confidential information relating to a good or service of the Party making the assessment; and

ii) in any case, treatment that protects the legitimate commercial interests of the applicant;

h) ensure that any fee charged for assessing the conformity of a good or service imported from another Party is equitable in relation to any fee charged for assessing the conformity of an identical or similar good or service of the assessing Party, taking into account communication, transportation and other related costs;

i) 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;

j) where possible, endeavor to ensure that the procedure is carried out at that facility and, where appropriate, a mark of conformity is awarded;

k) in the case of a good or service that has been modified as a result of a determination of conformity assessment with applicable technical regulations or standards, limit the procedure to what is necessary to determine that the good or service continues to comply with those regulations or standards; and

l) limit to reasonableness any requirement for samples of a good and ensure that the selection of samples does not cause unnecessary inconvenience to the applicant or its representative.

6. The Parties shall apply the provisions of paragraph 5 to their approval procedures with appropriate adjustments.

Article 14-09. Publication and Provision of Information.

1. Each Party shall inform the other Parties of the standardization measures it intends to adopt in accordance with the provisions of this Chapter prior to the entry into force of such measures and no later than to its nationals.

2. When proposing the adoption or modification of any standardization measure, each Party:

a) publish a notice and inform the other Parties of its intention to adopt or modify such measure, to enable interested parties to familiarize themselves with the proposal, at least 60 days prior to its adoption or modification;

b) identify in the notice and information the good or service to which the measure will be applied, and include a brief description of its objective and motivation;

c) provide a copy of the proposed measure to any Party or interested party upon request and, where possible, identify the provisions that deviate substantially from the relevant international standards;

d) without discrimination, allow other Parties and interested parties to comment and, upon request, discuss and take into account such comments, as well as the results of the discussions; and

e) ensure that, upon adoption of the measure, it is published in an expeditious manner, or otherwise made available to interested parties in the Party so that they may become familiar with it.

3. With respect to any technical regulation of a state or departmental or municipal government, each Party:

a) ensure that the intention of that government to adopt or amend such regulations at an appropriate initial stage is published in a notice and that the other Parties are informed of that government's intention;

b) ensure that the notice and information shall identify the good or service to which the technical regulation applies, and shall include a brief description of its objective and motivation;

c) ensure that a copy of the proposed regulations is provided to the Parties or to any interested person upon request;

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 Party so that they may become familiar with it.

4. Each Party shall inform the other Parties of its standardization plans and programs.

5. Where a Party considers it necessary to address an urgent problem related to the safety or protection of human, animal and plant life and health, its environment or practices that mislead consumers, it may omit any of the steps set out in paragraph 2(a) and (b), provided that in adopting the standardization measure:

a) immediately inform the other Parties, in accordance with the requirements set forth in paragraph 2, subparagraph b), including a brief description of the urgent problem;

b) deliver a copy of the measure to any Party or interested party that so requests;

c) without discrimination, allow other Parties and interested parties to make comments in writing and, upon request, discuss and take into account such comments and the results of the discussions; and

d) ensure that the measure is published in an expeditious manner, or allow interested parties to become familiar with it.

6. The Parties shall allow a reasonable period to elapse between the publication of their standardization measures and the date on which they enter into force, in order to give interested parties the opportunity to adapt to the measures, except where it is necessary to address one of the urgent problems identified in paragraph 5.

7. Each Party shall designate a governmental authority responsible for the implementation of the information provisions of this Chapter at the federal or central level, and shall inform the other Parties thereof. Where a Party designates two or more governmental authorities for this purpose, it shall inform the other Parties, without ambiguity or exception, of the scope of responsibilities of those authorities.

Article 14-10. Information Centers.

1. Each Party shall ensure that there is at least one information center within its territory capable of answering all reasonable inquiries and requests from another Party and interested parties, as well as providing relevant documentation regarding:

a) any standardization measure adopted or proposed in its territory at the level of its federal or central, state or departmental, or municipal government;

b) the participation and membership of the Party, and of its relevant authorities at the federal or central, state or departmental or municipal level in international or regional standardizing bodies and conformity assessment systems, in bilateral or multilateral agreements, within the scope of this Chapter, as well as the provisions of such systems and agreements;

c) the location of notices published pursuant to this chapter, or the place where such information may be obtained;

d) the location of the information centers; and

e) the Party's risk assessment processes, the factors it takes into consideration in carrying out the assessment and in establishing the levels of protection it considers appropriate, in accordance with Article 14-05, paragraph 2.

2. When a Party designates more than one information center:

a) inform the other Parties of the scope of responsibilities of each of these centers; and

b) ensure that any request sent to the wrong clearinghouse is expeditiously forwarded to the correct clearinghouse.

3. Each Party shall take such measures as are reasonable and within its power to ensure that there is at least one information center, within its territory, capable of responding to all inquiries and requests from another Party and interested parties, as well as of providing relevant documentation, or information from which such documentation may be obtained, relating to:

a) any standard or conformity assessment process adopted or proposed by non-governmental standardizing bodies in its territory; and

b) participation and membership in international and regional standardization bodies and conformity assessment systems of relevant non-governmental bodies in its territory.

4. Each Party shall ensure that when another Party or interested parties, 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 to its nationals, except for the actual cost of delivery. Copies of mandatory technical regulations and conformity assessment procedures requested by the Parties shall be supplied free of charge.

Article 14-11. Limitations on the Provision of Information.

Nothing in this Chapter shall be construed to require a Party to provide any information the disclosure of which it considers contrary to its essential security interests, or prejudicial to the legitimate commercial interests of certain enterprises.

Article 14-12. Metrological Standards.

The Parties shall make compatible, to the greatest extent possible, their national metrological standards on the basis of the international standards in force, when such standards constitute or create unnecessary obstacles to trade.

Article 14-13. Health Protection.

1. Medicines, medical equipment, medical instruments, pharmochemical products and other inputs for human, animal and plant health that are subject to sanitary registration within the territory of any of the Parties, shall, where appropriate, be registered, recognized or evaluated by the competent authority of that Party based on a single national system of federal or central mandatory compliance.

2. Certificates of compliance with the standards and technical regulations of the companies producing or packaging the products referred to in paragraph 1 shall be accepted only if they have been issued by the competent regulatory authorities of the federal or central government of the Parties.

3. The Parties shall establish a system of mutual technical cooperation based on the following program:

a) identification of specific needs:

i) application of good manufacturing practices in the elaboration and approval of drugs, particularly those for human use;

ii) application of good laboratory practices in the analysis and evaluation systems established in the ISO 9000 and 25 guides in force;

iii) development of common identification and nomenclature systems for auxiliary health products and medical instruments;

b) standardization of labeling requirements and strengthening of standardization and surveillance systems in relation to warning labeling;

c) training and education programs, and the organization of a common system of training, continuing education, training and evaluation of sanitary officers and inspectors;

d) development of a mutual accreditation system for verification units and testing laboratories; e) updating of legal and regulatory frameworks; and

f) strengthening formal communication systems to monitor and regulate the exchange of products related to human, animal and plant health.

4. In order to carry out the activities proposed in paragraph 3, the Parties shall establish, in accordance with article 14-17, paragraph 5, a technical subcommittee in charge of monitoring and organizing such activities, to provide guidance and recommendations to the Parties upon their request.

Article 14-14. Risk Assessment.

1. Pursuant to Article 14-05, paragraph 2, Parties may carry out risk assessments. In doing so, they shall ensure that they take into consideration risk assessment methods developed by international organizations and that their standardization measures are based on an evaluation of the risk to human, animal and plant health and safety and their environment.

2. In conducting a risk assessment, the Party conducting the risk assessment shall take into consideration all relevant scientific evidence, available technical information, intended end use, processes or methods of production, operation, inspection, quality, sampling or testing, or environmental conditions.

3. Where a Party, in accordance with Article 14-05, paragraph 2, having established its level of safety protection it considers appropriate, conducts a risk assessment, it shall avoid arbitrary or unjustifiable distinctions between similar goods and services at the level of protection it considers appropriate, if such distinctions are made:

a) have the effect of arbitrarily or unjustifiably discriminating against goods or service suppliers of the other Parties;

b) constitute a disguised restriction on trade between the Parties; or

c) discriminate between similar goods or services for the same use, in accordance with the same conditions posing the same level of risk and conferring similar benefits.

4. Where the Party conducting a risk assessment concludes that the scientific evidence or other available information is

insufficient to complete that assessment, it may adopt a technical regulation on an interim basis based on the relevant available information. Once it has been presented with sufficient information to complete the risk assessment, the Party shall complete its assessment as soon as possible and shall review, and where appropriate, reconsider the provisional technical regulation in the light of that assessment.

Article 14-15. Handling of Hazardous Substances.

For the control, management and acceptance of toxic or hazardous substances or wastes, each Party shall apply the provisions, guidelines or recommendations of the relevant international agreements to which it is a party.

Article 14-16. Labeling.

1. The labeling requirements for goods and services falling within the scope of this chapter shall be subject to the provisions set forth in this chapter.

2. Each Party shall apply its relevant labeling requirements within its territory and in accordance with the provisions of this Chapter.

3. The Parties shall seek to develop common labeling requirements. Proposals made by each Party shall be evaluated by the Committee referred to in Article 14-17.

4. The Committee referred to in article 14-17, may work and formulate recommendations, among others, on the following areas of labeling, packaging and packing:

a) acommon system of symbols and pictograms;

b) definitions and terminology; or

c) presentation of the information.

Article 14-17. Committee for Standardization Measures.

1. The Parties create a Committee for Standardization Measures.

2. The Committee's functions include, among others:

a) monitoring the implementation, enforcement and administration of this chapter, including the progress of the subcommittees and working groups established pursuant to paragraph 4 and the operation of the information centers established pursuant to article 14-10 paragraph 1;

b) to facilitate the process through which the Parties will make their standardization and metrology measures compatible;

c) provide a forum for the Parties to consult on matters related to standardization and metrology measures;

d) report annually to the Commission on the implementation of this chapter; and

e) to develop the necessary procedural mechanisms to achieve recognition of conformity assessment bodies.

3. The Committee:

a) shall be composed of an equal number of representatives of each Party. Each Party shall establish its procedures for the selection of its representatives;

b) meet at least once a year, as well as when requested by any Party, unless otherwise agreed by the Parties;

(c) establish its rules of procedure; and d) shall make its decisions by consensus.

4. When the Committee considers it appropriate, it may establish such subcommittees and working groups as it deems pertinent and determine their scope of action and mandate. Each subcommittee and working group shall be composed of representatives of each Party and may:

a) when it deems it necessary, call to participate in its meetings or consult with:

i) representatives of non-governmental organizations, such as standardization bodies, or private sector chambers and associations;

ii) scientific; or

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 Committee shall establish:

a) the Subcommittee on Health Standardization Measures; and

b) any other subcommittees and working groups it deems appropriate to discuss, among others, the following topics:

i) the identification and nomenclature of the goods and services subject to the standardization measures;

ii) technical regulations and quality and identity standards;

iii) packaging, labeling and presentation of information for consumers, including measurement systems, ingredients, sizes, terminology, symbols and other related matters;

iv) programs for product approval and post-sale surveillance;

v) principles for the accreditation and recognition of testing facilities, inspection bodies and conformity assessment bodies;

vi) the development and implementation of a uniform system for the classification and reporting of hazardous chemicals and the communication of chemical hazards;

vii) programs to ensure compliance with the provisions in force, including training and inspection by the personnel responsible for regulation, analysis and verification of compliance;

viii) the promotion and application of good laboratory practices;

ix) the promotion and application of good manufacturing practices;

x) criteria for the evaluation of potential damage to the environment due to the use of goods or services;

xi) analysis of the procedures for the simplification of the requirements for the importation of goods and for the provision of specific services;

xii) guidelines for testing of chemicals, including industrial, agricultural, pharmaceutical and biological chemicals; and

xiii) means to facilitate consumer protection, including consumer redress.

Article 14-18. Technical Consultations.

1. When a Party has doubts about the interpretation or application of this Chapter with respect to the standardization measures, metrology or related measures of another Party, the Party may alternatively resort to the Committee or the dispute settlement mechanism of the Agreement. The Parties involved may not use both avenues simultaneously.

2. When a Party decides to approach the Committee, it shall inform the Committee so that it may consider the matter or refer it to a subcommittee or working group, or other competent forum, with a view to obtaining non-binding technical advice or recommendations from them.

3. The Committee shall consider any matter referred to it pursuant to paragraphs 1 and 2 as expeditiously as possible and, likewise, shall bring to the attention of the Parties any technical advice or recommendations it develops or receives in relation to that matter. Once the Parties concerned receive from the Committee any technical advice or recommendation that they have requested, they shall send to the Committee a written response regarding that technical advice or recommendation, within a period of time to be determined by the Committee.

4. Pursuant to paragraphs 2 and 3, in the event that the technical recommendation issued by the Committee does not resolve the dispute between the Parties involved, they may invoke the dispute settlement mechanism of the Treaty. If the Parties concerned so agree, consultations held before the Committee shall constitute consultations for the purposes of Article 19-05.

5. A Party asserting that a standardization measure of another Party is inconsistent with the provisions of this Chapter shall have to demonstrate such inconsistency.

Chapter XV. Public Sector Procurement

Section A. Scope of Application and National Treatment

Article 15-01. Definitions.

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

construction services contract: a contract for the performance by any means of civil or building works as indicated in the appendix to annex 5 of article 15-02.

entity: an entity included in Annexes 1 and 2 to Article 15-02 and in the Protocol to be developed by the Parties pursuant to Article 15-26 for state or departmental government entities.

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 bidding procedures, selective bidding procedures or restricted bidding procedures. open bidding procedures: procedures in which all interested suppliers may submit bids.

restricted tendering procedures: procedures by which an entity communicates individually with suppliers only in the circumstances and in accordance with the conditions described in Article 15-16.

selective bidding procedures: procedures in which, under the terms of Article 15-12, suppliers invited by the entity may submit bids.

supplier: a person who has provided or may provide goods or services in response to an entity's invitation to tender.

locally established supplier: inter alia, a natural person resident in the territory of the Party, an enterprise organized or established under the laws of the Party, and a branch or representative office located in the territory of the Party.

services: among others, construction services contracts, unless otherwise specified.

Article 15-02. Scope of Application and Coverage of Obligations.

1. This Chapter applies to measures that a Party adopts or maintains in relation to purchases:

(a) a central or federal government entity listed in Annex 1 to this Article; a government enterprise listed in Annex 2 to this Article; or a state or departmental government entity as the Parties may establish in the Protocol referred to in Article 15-26;

(b) of goods, in accordance with Annex 3 to this Article, of services, in accordance with Annex 4 to this Article, or of construction services, in accordance with Annex 5 to this Article; and (c) of services, in accordance with Annex 5 to this Article.

(c) when the value of the contract 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 6 to this article, for the case of:

i) central or federal 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) governmental enterprises, of US$250,000 thousand for contracts for goods, services or any combination thereof, and US$8 million for contracts for construction services; and

(iii) state and departmental government entities, the value of the applicable thresholds, in accordance with what the Parties shall establish in the Protocol referred to in Article 15-26.

2. Paragraph 1 shall be subject to the reservations and general notes indicated in Annexes 7 and 8 to this article, respectively.

3. Subject to paragraph 4, where the procurement contract that an entity is to award is not subject to this chapter, its provisions shall not be construed to cover the components of any goods or services of that contract.

4. No entity of the Parties shall conceive, develop or structure a purchase contract in such a way as to avoid the obligations of this Chapter.

5. Purchases include acquisitions by methods such as purchase, lease or rental, with or without an option to purchase. Purchases do not include:

a) non-contractual agreements or any form of governmental assistance, including cooperative agreements, transfers, loans, capital transfers, guarantees, tax incentives and governmental provision of goods and services to individuals or to state, departmental and regional governments; and

b) the acquisition of fiscal agency or depository services, liquidation and administration services for regulated financial institutions, nor the sale and distribution services of public debt.

Article 15-03. 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 estimated value at the time of publication of the call for bids in accordance with Article 15-11.

3. When calculating the value of a contract, entities shall take into account all forms of remuneration, including bonuses, fees, commissions and interest.

4. In addition to the provisions of Article 15-02, paragraph 4, 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. When 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 successive or recurring contracts entered into during the preceding fiscal year or the preceding twelve months, adjusted where possible for changes in quantity and value anticipated for the following twelve months; or

b) the estimated value of successive or recurring contracts to be entered into during that fiscal year or in the twelve months following the initial contract.

6. In the case of lease or rental 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 twelve 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 twelve months, on the basis of the total value including the estimated residual value; or

b) in the case of contracts for an indefinite term, the basis shall be the estimated monthly payment multiplied by 48.

If the entity is uncertain as to whether a contract is for a definite or indefinite term, it shall calculate the value of the contract using the method indicated in paragraph b).

7. When the bidding conditions require optional clauses, the basis for valuation will be the total value of the maximum allowable purchase, including all possible optional purchases.

Article 15-04. National Treatment and Non-discrimination, and Most Favored Nation Treatment.

1. With respect to the measures covered by this Chapter, each Party shall accord to goods of another Party, to suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment accorded:

a) to its own assets, and suppliers; and

b) to goods and suppliers of another Party.

2. With respect to the measures covered by this Chapter, no Party may:

a) giving a supplier established in its territory less favorable treatment 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 ground that the goods or services offered by that supplier for a particular purchase are goods or services of another Party.

3. Paragraph 1 does not apply to measures relating to import taxes or other charges of any kind on or in connection with importation, to the method of levying such taxes and charges, or to other import regulations, including restrictions and formalities.

Article 15-05. Rules of Origin.

For the purposes of government procurement covered by this Chapter, no Party shall apply rules of origin to goods imported from any other Party other than, or inconsistent with, the rules of origin set out in Chapter VI.

Article 15-06. Denial of Benefits.

A Party may deny benefits under this Chapter to a service supplier of another Party, after notice and consultations, where the Party determines that the service is being supplied by an enterprise that does not engage in substantial business activities in the territory of any Party and is owned or controlled by persons of a non-Party.

Article 15-07. Prohibition of Special Compensatory Conditions.

1. 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 countervailing conditions are conditions that an entity imposes or takes into account prior to or during the procurement process to promote local development or improve balance of payments accounts through local content requirements, licensing of technology, investment, countertrade or similar requirements.

2. The Parties shall exchange information on the results of the implementation of programs aimed at supporting local industry, or the performance of any type of committee for the same purposes, such as advisory committees.

3. Each Party may have recourse to the Dispute Settlement Mechanism of Chapter XIX if, as a result of the implementation of the programs or the performance of the committees referred to in paragraph 2, its suppliers are discriminated against.

Article 15-08. Technical Specifications.

1. Each Party shall ensure that its entities do not develop, adopt or apply any technical specification that has the purpose or effect of creating unnecessary obstacles to trade.

2. Each Party shall ensure that, where appropriate, any technical specifications established by its entities:

(a) 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 established by its entities do not require or make reference to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier, unless there is no other sufficiently precise or comprehensible 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 impeding 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 B. Bidding Procedures

Article 15-09. Bidding Procedures.

1. The bidding procedures shall be applied in accordance with the provisions of the annex to this article, for the parts indicated therein.

2. Each Party shall ensure that the tendering procedures of its entities:

a) applied in a nondiscriminatory manner; and

b) are consistent with this article and with articles 15-10 to 15-16.

3. Each Party shall ensure that its entities:

a) do not provide any supplier with information about a particular purchase in such a way that it has the effect of preventing competition; and

b) provide all suppliers with equal access to information regarding a purchase during the period prior to the issuance of any solicitation or bidding documents.

Article 15-10. Qualification of Suppliers.

1. Pursuant to Article 15-04, in the qualification of suppliers during the tendering procedure, no entity of a Party may discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.

2. An entity's rating procedures shall be consistent with the following:

(a) the conditions for supplier participation 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 procedures, including financial guarantees, technical qualifications and information necessary to demonstrate the financial, commercial and technical capacity 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 in question;

(c) the financial, commercial and technical capacity of a supplier shall be determined on the basis of its overall activity, including both its activity exercised in the territory of the Party of the supplier and its activity in the territory of the Party of the purchasing entity, if any;

(d) an entity may not use the supplier qualification process, including the time it requires, for the purpose of excluding suppliers of another 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 another Party that are eligible to participate in a particular purchase;

(f) an entity shall consider for a particular purchase those suppliers of another 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 permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time, and that all suppliers included in the list are notified of the cancellation of the list or their removal from the list;

(h) where, after publication of the invitation pursuant to Article 15-11, 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 on whether it has been qualified; and

(j) where an entity rejects an application for qualification, or ceases to recognize the qualification of a supplier, upon the supplier's request, the entity shall promptly provide relevant information on the reasons for its action.

3. Each Part:

(a) shall ensure that each of its entities uses a single qualification procedure; where the entity establishes the need for a different procedure and, at the request of another Party, is prepared to demonstrate such need, it may use additional qualification procedures; and

(b) shall endeavor to minimize the differences between the rating procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier for reasons such as bankruptcy or misrepresentation.

Article 15-11. Invitation to Participate.

1. Except as provided in Article 15-16, an entity shall publish an invitation to participate for all purchases in accordance with paragraphs 2, 3 and 5 in the appropriate publication listed in the annex to this Article.

2. The invitation to participate shall take the form of a call for proposals, which shall contain the following information:

a) a description of the nature and quantity of the goods or services to be acquired, 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 date for starting or concluding the delivery of the goods or services to be purchased;

d) the address to which the application to be invited to bid or to qualify for the list of suppliers must be sent and the deadline for receipt of the application;

e) the address to which the bids shall be sent and the deadline for their receipt;

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) astatement 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 invites bids for purchase, lease or rental, with or without an option to purchase.

3. Notwithstanding paragraph 2, an entity identified in Annex 2 to Article 15-02 or in the Protocol to be developed by the Parties pursuant to Article 15-26 for state or departmental government entities, may use as an invitation to participate a scheduled solicitation to purchase, 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 object of the purchase;

b) the deadlines set for the receipt of bids or requests to be invited to bid;

c) the address from which documentation related to the purchase may be requested;

d) an indication that interested suppliers will express to the entity their interest in the purchase; and

e) identification of an information center in 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 interest in the procurement to confirm their interest, based on information provided by the entity that shall include, at a minimum, the information set forth in paragraph 2.

5. Notwithstanding paragraph 2, an entity identified in Annex 2 to Article 15-02 or in the Protocol that the Parties develop pursuant to Article 15-26 for state or departmental government entities 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 Article 15-15, paragraph 8, information that provides all suppliers that have expressed an interest in participating in the procurement with a realistic opportunity to evaluate their interest. The information shall normally include the information required for the solicitation referred to in paragraph 2. The information provided to one interested supplier shall be provided without discrimination to all other interested suppliers.

6. In the case of selective tendering procedures, an entity that maintains a permanent 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) an enumeration of all lists in force, including their headings, in relation to the goods or services, or categories of goods or services to be purchased 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 expiration of the time limit for opening or receipt of tenders as stated in the invitations or tender documentation, the entity considers it necessary to make changes to 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 indicate in the solicitations referred to in this article that the purchase is covered by this chapter.

Article 15-12. Selective Bidding Procedures.

1. In order to ensure optimal effective competition among suppliers of the Parties in selective tendering procedures, an entity shall invite, for each purchase, as many domestic suppliers and suppliers of the other Parties 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 suppliers that will be invited to bid on a particular purchase. In the selection process, the entity shall provide an equal opportunity to suppliers on the list.

3. Pursuant to Article 15-10, paragraph 2(f), an entity shall permit a supplier requesting to participate ina particular procurement 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 not inviting or admitting the supplier to tender.

Section B. Bidding Procedures

Article 15-13. Time Limits for Bidding and Delivery.

1. One entity:

(a) by setting a deadline, provide suppliers of another Party sufficient time to prepare and submit tenders prior to the closing of the tender;

(b) in establishing a time limit, in accordance with its own reasonable needs, take into account such factors as the complexity of the purchase, the anticipated degree of subcontracting and the time normally required for transmitting bids by mail from both overseas and domestic locations; and

(c) when establishing the deadline 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 bid shall not be less than forty days from the date of publication of a call for bids, in accordance with Article 15-11;

(b) in selective tendering procedures not involving the use of a standing list of qualified suppliers, the time limit for the submission of an application for admission to tender shall be not less than twenty-five days from the date of publication of a solicitation in accordance with Article 15-11, and the time limit for the receipt of tenders shall be not less than forty 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 forty days from the date of the first invitation to tender, but where the latter date does not coincide with the date of publication of an invitation to tender referred to in Article 15-11, not less than forty days shall elapse between the two dates.

3. An entity may reduce the time periods provided for in paragraph 2 in accordance with the following:

(a) as provided in article 15-11, paragraph 3 or 5, when a call for bids has been published within a period of not less than forty days and not more than twelve months, the forty-day period for the receipt of bids may be reduced to not less than twenty-four days;

(b) in the case of a second or subsequent publication relating to recurring contracts, pursuant to article 15-11, paragraph 2, subparagraph (a), the forty-day period for receipt of tenders may be reduced to not less than twenty-four days;

(c) where, for reasons of urgency duly justified by the entity, the time limits specified cannot be complied with, such time limits shall in no case be less than ten days from the date of publication of a notice of convocation pursuant to Article 15-11; or

(d) where an entity identified in Annex 2 to Article 15-02 or in the Protocol to be developed by the Parties pursuant to Article 15-26 for state or departmental government entities uses a solicitation referred to in Article 15-11, paragraph 5, as an invitation to participate, the entity and the selected suppliers may establish, by mutual agreement, the time limits; however, in the absence of agreement, the entity may establish time limits sufficiently long to allow for the proper submission of tenders, which in no case shall be less than ten days.

4. In establishing the delivery date for goods or services and in accordance with its reasonable requirements, 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 15-14. Bidding Conditions.

1. When 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 15-11, paragraph 2, except for the information required under Article 15-11, paragraph 2(h) of that Article. The documentation shall also include:

a) the address of the entity to which the bids are to be sent;

b) the address to which requests for additional information should be sent;

c) the date and time of the closing date for the receipt of bids and the period during which the bids shall remain in effect;

d) the persons authorized to attend the bid opening and the date, time and place of the bid opening;

e) astatement of any economic or technical conditions, and of any financial guarantees, information and documents required from 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 bids and the cost elements to be taken into account in evaluating bid prices, such as transportation, insurance and inspection charges and, in the case of goods or services of the other Parties, import duties and other import charges, taxes and currency of payment;

h) payment terms; and

i) any other requirement or condition.

2. One entity:

a) provide the bidding documents upon request of a supplier participating in open tendering procedures or requesting to participate in selective tendering procedures, and respond promptly to any reasonable request for clarification of the bidding documents; 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 15-15. Submission, Receipt and Opening of Bids and Award of Contracts.

1. The entity shall use procedures for the submission, receipt and opening of bids and award of contracts that are consistent

with the following:

(a) bids shall normally be submitted in writing, either directly or by mail;

(b) where tenders transmitted by telex, telegram, telefacsimile 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 to tender;

(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 contradiction between it and any other documentation received after the deadline for receipt of bids has expired;

(e) telephone bidding shall not be permitted;

(f) applications to participate in selective bidding may be submitted by telex, telegram, telefacsimile and, where permitted, by other means of electronic transmission; and

(g) Opportunities to correct formal errors, which are given to suppliers during the period between bid opening and contract award, may not be used in such a way 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 offer at the place of destination of the transmission.

3. No entity shall penalize a supplier whose bid is received at the office designated in the bidding documents after the expiration of the deadline, when the delay is due only to an oversight on the part of the entity.

4. All tenders solicited by an entity in public 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 15-17, 15-18 or Chapter XIX.

5. An entity shall award contracts in accordance with the following:

(a) in order for a bid to be considered for award, it must comply, at the time of opening, with the requirements established in the invitation to bid or in the bidding conditions and come from suppliers that comply with the conditions for participation;

(b) if the entity receives a bid that is abnormally lower in price than the other bids, the entity may check 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) unless the entity decides not to award the contract in the public interest, the entity shall award the contract to the supplier that it has determined to be capable of performing the contract and whose bid 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;

(d) awards will be made in accordance with the criteria and requirements set forth in the bidding documents; and

(e) option clauses shall not be used to circumvent this chapter.

6. No entity of a Party may condition the award of a procurement contract 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. One entity:

(a) upon specific request, promptly inform participating suppliers of decisions on contracts awarded and, if so requested by them, in writing; and

(b) upon specific request of a supplier whose bid was not selected, provide relevant information to that supplier as to the reasons why its bid was not selected, the characteristics and advantages of the selected bid, and the name of the successful supplier.

8. Not later than seventy-two days after the award of the procurement contract, an entity shall communicate directly to participating suppliers or insert a notice in the appropriate publication referred to in the annex to Article 15-11 containing

the following information:

a) adescription of the nature and quantity of the goods or services that are the object 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 refrain from disclosing certain information about the award of the contract where such disclosure:

a) could impede the enforcement of laws or would be contrary to the public interest;

b) would prejudice the legitimate commercial interests of a particular person; or

c) was detrimental to fair competition among suppliers.

Article 15-16. Restricted Bidding.

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 the provisions of Articles 15- 09 through 15-15, provided that restricted tendering procedures are not used to avoid the maximum possible competition or in a manner that constitutes a means of discriminating between suppliers of the other Parties or of protecting 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 bids in response to a call for public or selective bidding or when the bids submitted have resulted from collusion or do not comply with the essential requirements of the bidding conditions, or when the bids have been formulated by suppliers that do not comply with the conditions of 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 when 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 beyond the entity's control, it would not be possible to obtain the goods or services in a timely manner through competitive or selective bidding;

d) for additional deliveries from the initial supplier either as replacement parts or ongoing 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 software, to the extent that the initial purchase of the software was covered by this chapter;

e) where an entity purchases 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 15- 09 through 15-15. 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 meeting 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 only offered at very short notice, such as extraordinary disposals made by companies that are not normally suppliers; or 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 the publication of the invitation to qualified suppliers to bid;

(ii) organized in such a way that the design contract is awarded to the winner; and iii) submitted to an independent panel of judges; and

i) when an entity requires consulting services related to aspects 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 type 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. Each report shall be retained by the entity. They shall be made available to the competent authorities of the Party for use, if required, in accordance with Articles 15-17, 15-18 or Chapter XIX.

Section C. Challenge and Dispute Resolution Procedures.

Article 15-17. Challenge Procedures.

1. The challenge procedures shall be applied in accordance with the provisions of the annex to this article for the Parties indicated therein.

2. 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 relation to any aspect of the procurement process which, for the purposes of this Article, commences from the time an entity has defined its procurement requirement and continues until the award of the procurement contract;

(b) before initiating a challenge procedure, a Party may encourage the supplier to seek with the procuring entity a solution to its complaint;

(c) each Party shall ensure that its entities consider in a timely and impartial manner any complaints or challenges regarding purchases covered by this Chapter;

(d) whether or not a supplier has attempted to resolve its complaint with the entity, or after failure to reach a satisfactory resolution, a Party may not prevent the supplier from initiating a challenge or other remedy;

(e) a Party may request 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 knows or should have known of the basis of the complaint;

(g) each Party shall establish or designate a review authority with no substantial interest in the outcome of the procurement to receive challenges and issue relevant rulings and recommendations;

(h) upon receipt of the challenge, the reviewing authority shall proceed to investigate it expeditiously;

(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 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 recommendation to resolve the challenge, which may include directions to the entity to reevaluate the bids, terminate the contract, or rebid the contract;

(l) Generally, entities shall follow the recommendations 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 shall make them available to the Parties and interested persons;

(o) each Party shall specify in writing and make generally available all 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.

3. A Party may request the initiation of the challenge procedure only after the invitation to tender has been published or, if not published, after the tender documentation is available. Where a Party establishes such a requirement, the ten working day period referred to in paragraph 2(f) shall not begin to run before the date on which the invitation has been published or the tender documentation is available.

Article 15-18. Settlement of Disputes.

1. Where a Party considers that a measure of another Party is inconsistent with the obligations of this Chapter or would cause nullification or impairment within the meaning of the Annex to Article 19-02, it shall apply at the option of the complaining Party:

(a) the provisions of Chapter XIX; or

(b) the provisions of chapter XIX with the modifications provided for in paragraphs 2 to 9.

2. Any consulting Party may request in writing the constitution of an arbitral tribunal whenever a matter is not resolved in accordance with Article 19-05 within thirty days following the request for consultations.

3. For the participation of the third Party as complaining Party, instead of the time limit established in article 19-07, paragraph 3, a time limit of five days shall be observed.

4. For the constitution of the arbitral tribunal, instead of the time limits established in Article 19-09, the following shall be observed:

a) the time periods established in paragraph 1, subparagraph b), shall be ten days and three days, respectively;

b) the time limit established in paragraph 1, subparagraph c), shall be five days;

c) the time limits set forth in paragraph 2, subparagraph b), shall be 10 days and three days, respectively; and

d) the time limit established in paragraph 2, subparagraph c), shall be five days.

5. For the challenge, instead of the time limit established in article 19-10, a ten-day period shall be observed.

6. For the preliminary decision, instead of the time limits established in article 19-14, the following shall be observed:

a) the period provided for in paragraph 1 shall be sixty days; and

b) the time limit established in paragraph 2 shall be ten days.

7. For the final decision, instead of the time limits established in article 19-15, the following shall be observed:

a) the period provided for in paragraph 1 shall be twenty days; and

b) the time limit established in paragraph 3 shall be ten days.

8. Pursuant to Article 19-16, paragraph 1, when ordering the period of time for the Parties to comply with the final decision, the arbitral tribunal shall take into account the need for a reduced period of time in the case of disputes arising under this chapter.

9. For the final decision, instead of the term established in article 19-17, a term of forty days shall be observed.

10. The provisions of this article do not prevent a supplier of a Party from initiating the judicial or administrative proceedings available under the domestic law of each Party.

Section D. General Provisions

Article 15-19. 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 such measures:

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

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

c) necessary to protect intellectual property; or

d) related to the goods or services of handicapped persons, charitable institutions or prison labor.

Article 15-20. Provision of Information

1. This Article shall be applied in accordance with the provisions of Annex 1 to this Article, for the Parties indicated in that Annex.

2. In accordance with Chapter XXI, 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 insertion in the relevant publications referred to in Annex 2 to this Article.

3. Each Part:

(a) explain to another Party, upon request, its government procurement procedures;

(b) ensure that its entities, upon request from a supplier, promptly explain their government procurement practices and procedures; and

(c) designate upon entry into force of this Treaty one or more information centers for:

(i) facilitate communication between the Parties; and

ii) answer, upon request, all reasonable questions from the other Parties with a view to providing relevant information on matters covered by this chapter.

4. 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 to which the procuring entity belongs 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.

5. Each Party shall provide to another Party, upon request, information available to that Party or its entities on covered purchases by its entities and on individual contracts awarded by its entities.

6. No Party may disclose confidential information, the disclosure of which may 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.

7. Nothing in this Chapter shall be construed to require a Party to furnish confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

8. In order to enable effective monitoring of purchases covered by this Chapter, each Party shall collect statistics and provide to the other Parties 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 applicable threshold values, 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 categories 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 pursuant to Article 15-16, 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 in accordance with the exceptions to this chapter established in Annex 7 to Article 15-02, broken down by entity.

9. Each Party may organize by state or department any portion of the report referred to in paragraph 7 that pertains to the entities set forth in the Protocol that the Parties develop pursuant to Article 15-26 for state or departmental government entities.

10. Each Party shall make available to the other Parties and to the suppliers that request it, during the first quarter of the year, its annual purchase program. This provision shall not constitute a purchase commitment for the entities.

Article 15-21. Technical Cooperation.

1. The Parties shall cooperate, on mutually agreed terms, to achieve a better 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 Parties and to the suppliers of these Parties, on a cost recovery basis, information concerning training and orientation programs relating to its government procurement systems, and access, without discrimination, to any programs it conducts.

3. The training and orientation programs referred to in paragraph 2 include:

a) training of public sector personnel directly involved in public sector procurement procedures;

b) training of suppliers interested in taking advantage of public sector procurement opportunities;

c) the explanation and description of specific aspects of each Party's government procurement system, such as its challenge mechanism; and

d) information regarding opportunities in the government procurement market.

4. Each Party shall establish upon entry into force of this Agreement at least one point of contact to provide information on the training and orientation programs referred to in this Article.

Article 15-22. Joint Participation Programs for Micro, Small and Medium Industry.

1. The Parties hereby establish the Micro, Small and Medium Industries Committee, composed of representatives of each Party. The Committee shall meet by agreement of the Parties, but not less than 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 industries.

2. The committee will work to facilitate the following activities of the Parties:

a) the identification of available opportunities for the training of personnel from micro, small and medium-size industries in public sector procurement procedures;

b) the identification of micro, small and medium-sized industries interested in becoming business partners of micro, small and medium-sized industries in the territory of another Party;

c) the development of databases on micro, small and medium-sized industries in the territory of each Party for use by entities of another Party wishing to make purchases from smaller-scale enterprises;

d) consulting with respect to the factors that each Party uses to establish its eligibility criteria for any micro, small and medium-sized industry program; and

e) carrying out activities to deal with any related matter.

Article 15-23. 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) communicate the modification to the other Parties;

b) incorporate the change in the corresponding annex; and

c) propose to the other Parties appropriate compensatory adjustments to its coverage, with the objective of maintaining a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding the provisions of paragraphs 1 and 2, a Party may make formal rectifications and minor amendments only to its lists in Annexes 1 to Article 15-02, as well as to the Protocol that the Parties develop pursuant to Article 15-26 for state or departmental government entities, provided that it communicates such rectifications to the other Parties, and no Party expresses its objection to the proposed rectifications within a period of thirty days. In such cases, it shall not be necessary to propose compensation.

4. Nocompensation need be proposed where a Party reorganizes its entities, including through programs for the decentralization of the procurement of those entities or where the relevant government functions are no longer performed by any public sector entity, whether or not covered by this Chapter. No Party may undertake such reorganizations or programs for the purpose of avoiding compliance with the obligations of this Chapter.

5. A Party may have recourse to the dispute settlement procedure under Chapter XIX where a Party considers that:

a) the adjustment proposed in accordance with paragraph 2, subparagraph 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.

Article 15-24. Disposal of Entities.

1. Nothing in this chapter prevents 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 15-02 or by other methods, the entity ceases to be subject to federal or central government control, 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.

3. Where a Party objects to the withdrawal of the entity on the grounds that the entity remains subject to federal or central government control, that Party may have recourse to the dispute settlement procedure under Chapter XIX.

Article 15-25. Future Negotiations.

1. The Procurement Committee shall recommend to the Parties to initiate negotiations with a view to the further liberalization of their respective government procurement markets.

2. In these negotiations, the Parties shall review all aspects of their government procurement practices for the purpose of:

a) evaluate the operation of its public sector procurement systems;

b) to seek to expand the chapter's coverage; and

c) revise the value of the thresholds.

3. Prior to such review, the Parties shall consult with their state or departmental governments with a view to reaching commitments, on a voluntary and reciprocal basis, for the incorporation into this chapter of purchases by state or departmental entities and enterprises owned or controlled by them.

Article 15-26. Protocols Annexed.

To reflect the outcome of the negotiations referred to in Article 15-25, the Parties shall develop Protocols.

Chapter XVI. Policy with Respect to State Enterprises

Article 16-01. Definitions.

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

designation: establishment, authorization or extension of the scope of the government monopoly to include an additional good or service, after the date of entry into force of this Agreement.

enterprise: any entity incorporated or organized under applicable law, whether or not for profit, including any corporation, trust, partnership, sole proprietorship, joint venture, joint venture or other association, except state- owned enterprises.

State enterprise: an enterprise owned or controlled by a Party through equity participation. market: the geographic and commercial market for a good or service.

monopoly: an entity, including a consortium or government agency, that, in any relevant market in the territory of a Party, has been designated as the sole supplier or purchaser of a good or service. It does not include an entity that has been granted an exclusive intellectual property right derived solely from that grant.

government monopoly: a monopoly owned or controlled by a Party or another government monopoly through equity participation.

according to commercial considerations: in accordance with the normal business practices of the private companies involved in the industry.

non-discriminatory treatment: the better treatment between national treatment and most-favored-nation treatment, as set forth in the relevant provisions of this Agreement.

Article 16-02. Monopolies and State Enterprises.

1. Each Party undertakes to ensure that its state enterprises grant to legal or natural persons of the other Parties non-discriminatory treatment in its territory with respect to the sale of goods and provision of services for similar commercial operations.

2. Each Party undertakes to ensure that its government monopolies and state-owned enterprises:

a) act solely on commercial considerations in the purchase or sale of the monopolized good or service in the relevant market in the territory of that Party, including with respect to its price, quality, availability, saleability, transportation and other terms and conditions for its purchase and sale; and

b) do not use their monopoly position in their territory to engage in anticompetitive practices in a non-monopolized market that may adversely affect persons of another Party.

3. Paragraph 2 does not apply to the acquisition of goods or services by government monopolies or state enterprises for official purposes, and:

a) without the purpose of commercial resale;

b) without the purpose of using them in the production of goods for commercial sale; or

c) without the purpose of using them in the provision of services for commercial sale.

4. With respect to the sale price of a good or service, paragraph 2, subparagraph a), applies only to the sale by government monopolies and state enterprises of:

a) goods or services to persons engaged in the production of industrial goods;

b) services to persons engaged in commercial resale; or

c) services to companies producing industrial goods.

5. The provisions of paragraph 2, subparagraph a) shall not apply to those activities of a government monopoly that are carried out in accordance with the terms of its designation, and respect the principles enshrined in paragraphs 1 and 2, subparagraph b).

Article 16-03. Committees.

Within three months of the entry into force of this Treaty, the Commission shall establish the following committees:

a) a competition committee, composed of representatives of each Party, which shall submit reports and recommendations to the Commission regarding further work on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area;

b) a committee which, in order to detect those practices of state enterprises that may be discriminatory or contrary to the provisions of this chapter, shall prepare reports and recommendations with respect to such practices.

Chapter XVII. Investment

Section A. Investment

Article 17-01. Definitions

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

enterprise: any entity incorporated, organized or protected under applicable law, whether or not for profit and whether privately or governmentally owned, including partnerships, foundations, companies, branches, trusts, participations, sole proprietorships, joint ventures or other associations;

investment: resources transferred to or reinvested in the national territory of a Party by investors of another Party, including:

a) any type of asset or right whose purpose is to produce economic benefits;

b) the participation of investors of a Party, in any proportion, in the capital stock of companies incorporated or organized under the laws of another Party;

c) enterprises owned or effectively controlled by an investor of that Party, which are incorporated or organized in the territory of the other Party; and

d) any other resource considered an investment under the laws of that Party. I

nvestment does not include credit or debt operations, among them:

a) a payment obligation of the State or of a State enterprise, nor the granting of a credit to the State or to a State enterprise;

b) pecuniary rights derived exclusively from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party; or

(ii) the granting of credit in connection with a commercial transaction, such as trade financing.

investor of a Party: any of the following persons who holds an investment in the territory of another Party:

a) the Party itself or any of its public entities or State enterprises;

b) a natural person who has the nationality of that Party in accordance with its laws;

c) an enterprise incorporated, organized or protected under the laws of that Party;

d) A branch located in the territory of that Party and carrying out commercial activities therein.

Article 17-02. Scope of Application.

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

a) investments of investors of another Party made in its territory;

b) investors of another Party in all matters relating to their investment; and

c) with respect to Article 17-04, to all investments in the territory of the Party.

2. This Chapter shall not apply to measures adopted or maintained by the Parties on financial services pursuant to Chapter XII, except as expressly provided in that Chapter.

3. This chapter applies throughout the territory of the Parties and at any level or order of government.

4. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures to preserve its national security or public order, or to enforce the provisions of its criminal laws.

Article 17-03. National Treatment and Most-Favored Nation Treatment.

1. Each Party shall accord to investors of another Party, and to investments of such investors, treatment no less favorable than that it accords, in like circumstances, to its own investors and investments.

2. Each Party shall accord to investors of another Party, and to investments of such investors, treatment no less favorable than that it accords, in like circumstances, to investors and their investments of another Party or of a non-Party. Most-favored-nation treatment shall not apply to the provisions of Article 17-01.

3. The provisions of paragraphs 1 and 2 shall extend to any measure adopted or maintained by a Party in connection with losses due to armed conflict, civil strife, disturbances of public order, acts of God or force majeure.

4. No Party shall be obliged to extend to investors or investments of another Party the advantages it has granted or will grant to investors or investments of another Party or of a non-Party under a treaty for the avoidance of double taxation.

Article 17-04. Performance Requirements.

1. No Party shall establish performance requirements by adopting investment measures that are mandatory or enforceable for the establishment or operation of an investment, or compliance with which is necessary to obtain or maintain an advantage or incentive, and that prescribe:

a) the purchase or use by an enterprise of products of domestic origin of that Party, or from domestic sources of that Party, whether specified in terms of particular products, in terms of volume or value of products, or as a proportion of the volume or value of its local production;

b) that the purchase or use of imported products by an enterprise is limited to an amount related to the volume or value of local products exported by the enterprise;

c) restrictions on the importation by an enterprise of products used in or related to its local production by limiting the enterprise's access to foreign exchange to an amount related to the inflow of foreign exchange attributable to that enterprise;

d) restrictions on the export or sale for export of products by an enterprise, whether specified in terms of particular products, in terms of volume or value of products, or as a proportion of volume or value of its local production.

2. The provisions contained in:

a) paragraph 1, subparagraphs a) and d), do not apply with respect to the requirements for qualification of goods with respect to export promotion programs;

(b) paragraph 1(a) does not apply with respect to purchase or use by a Party or a State enterprise;

(c) paragraph 1(a) above does not apply with respect to requirements imposed by an importing Party relating to the necessary content of goods to qualify for preferential tariffs or quotas.

3. Nothing in this Article shall be construed to prevent a Party from imposing, in connection with any investment in its territory, requirements regarding the geographical location of productive units, the generation of employment or training of labor, or the conduct of research and development activities.

4. Inthe event that, in the judgment of a Party, the imposition by another Party of any other requirement not provided for in paragraph 1 adversely affects the flow of trade, or constitutes a significant barrier to investment, the matter shall be considered by the Commission.

5. If the Commission finds that the requirement in question does in fact adversely affect the flow of trade or constitutes a

significant barrier to investment, it shall recommend to the Party concerned the suspension of the respective practice.

Article 17-05. Employment and Business Management.

Limitations on the number or proportion of foreigners who may work in an enterprise or perform managerial or administrative functions as provided for in the laws of each Party shall in no case prevent or hinder the exercise by an investor of control over its investment.

Article 17-06. Preparation of Reservations

1. Within eight months following the signature of the Treaty, the Parties shall draw up a Protocol consisting of four lists containing the sectors and sub-sectors in which each Party may maintain measures not in conformity with Articles 17-03, 17-04 and 17-05, in accordance with the following criteria:

a) with respect to the measures contained in Schedule 1, no Party shall increase the degree of nonconformity with those Articles as of the date of signature of this Agreement. Any amendment of any such measure shall not diminish the degree of conformity of the measure as in effect immediately prior to the amendment;

b) with respect to the measures contained in Schedule 2, each Party may adopt or maintain new measures inconsistent with those Articles or make such measures more restrictive;

c) List 3 shall contain the economic activities reserved to the State;

d) Schedule 4 shall contain exceptions to article 17-03, paragraph 2, in relation to bilateral or multilateral international treaties signed or to be signed by the Parties.

2. The Parties, in the negotiations referred to in Schedule 2 of paragraph 1, shall seek to reach agreements on the basis of reciprocity, aimed at achieving an overall balance in the concessions granted.

Article 17-07. Transfers.

1. Each Party shall permit all transfers relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay.

These transfers include:

a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, in-kind profits 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;

d) payments derived from compensation for expropriation; and

e) payments arising from the application of the provisions relating to the dispute resolution system.

2. Each Party shall permit transfers to be made in freely convertible currencies at the market rate of exchange prevailing on the date of transfer for spot transactions in the currency to be transferred, subject to paragraph 6.

3. Notwithstanding the provisions of paragraphs 1 and 2, each Party may, to the extent and for so long as necessary, prevent transfers by equitable, 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; or

d) ensuring compliance with judgments in a contentious proceeding.

4. In addition, each Party may, through the equitable and non-discriminatory application of its laws, request information and establish reporting requirements for transfers of currency or other monetary instruments.

5. Each Party may retain laws and regulations providing for income and supplementary taxes by such means as withholding

taxes applicable to dividends and other transfers, provided that they are not discriminatory.

6. Notwithstanding the provisions of this Article, each Party shall have the right, in circumstances of exceptional or severe balance of payments difficulties, to limit transfers temporarily and on an equitable and non-discriminatory basis, in accordance with internationally accepted criteria.

Article 17-08. Expropriation and Compensation.

1. No Party shall, except as provided in the Annex to this Article, expropriate or nationalize, directly or indirectly, an investment of an investor of another Party in its territory, or take any action tantamount to expropriation or nationalization of such investment (expropriation), except as provided in the Annex to this Article:

a) for reasons of public utility;

b) on a non-discriminatory basis;

c) in accordance with the principle of legality; and

d) by indemnification in accordance with paragraphs 2 to 4.

2. Compensation will be equivalent to the fair market value of the investment at the time of expropriation, and will 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 to determine the fair market value.

3. The indemnity payment shall be fully liquidable and freely transferable under the terms of Article 17-07.

4. Payment shall be made without delay. The time that elapses between the moment of fixing the compensation and the moment of payment shall not cause prejudice to the investor. Consequently, its amount shall be sufficient to ensure that the investor may, if it decides to transfer it, obtain, at the time of payment, an equal amount of the international currency normally used as a reference by the Party carrying out the expropriation. The payment shall also include interest at the current market rate for the reference currency.

Article 17-09. Special Formalities and Information Requirements

1. Nothing in Article 17-03 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 another Party, such as that the investments be constituted in accordance with the laws and regulations of the Party, provided that such formalities do not substantially impair the protection afforded by a Party under this Chapter.

2. Notwithstanding Articles 17-03 and 17-04, each Party may require an investor of another Party or its investment in its territory to provide information concerning that investment, as provided in that Party's law. Each Party shall protect information that is confidential from any disclosure that could adversely affect the competitive position of the investment or the investor.

Article 17-10. Relationship with other Chapters

In the event of any inconsistency between any provision of this Chapter and any other provision of this Agreement, the latter shall prevail to the extent of the inconsistency.

Article 17-11. Denial of Benefits.

A Party may, after notice to and consultation with the other Party, deny the benefits of this Chapter to an investor of another Party that is an enterprise of that Party, and to investments of that investor, if investors of a non-Party own or control a majority of the capital of 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 17-12. Extraterritorial Application of the Legislation of a Party.

No Party may, in relation to investments of its investors constituted and organized under the laws and regulations of another 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.

Article 17-13. Measures Relating to the Environment.

No Party shall eliminate domestic health, safety or environmental measures, or undertake to exempt from their application to an investment of an investor of any country, as a means of inducing the establishment, acquisition, expansion or retention of the investment in its territory. If a Party considers that another Party has encouraged an investment in such a manner, it may request consultations with that other Party.

Article 17-14. Investment Promotion and Information Exchange.

1. With the intention of increasing reciprocal investment participation, the Parties shall design and implement mechanisms for the dissemination, promotion and exchange of information regarding investment opportunities.

2. The Parties undertake to establish mechanisms for the exchange of fiscal and tax information.

Article 17-15. Double Taxation.

The Parties agree to initiate, between them, bilateral negotiations for the conclusion of agreements to avoid double taxation, according to the schedule to be established between the respective competent authorities.

Section B. Dispute Settlement between a Party and an Investor of Another Party

Article 17-16. Objective and Scope of Application.

1. This section and the annex to this article are intended to ensure equal treatment of investors of each Party on the basis of reciprocity and compliance with the rules and principles of international law, with the due exercise of the guarantees of hearing and defense within a legal process before an impartial tribunal.

2. The mechanism set out in this Section shall apply to investment claims brought by an investor of a Party (disputing investor) against a Party (disputing Party) regarding the breach of an obligation set out in this Chapter after the entry into force of this Agreement. The foregoing is without prejudice to an attempt by the disputing investor and the disputing Party (disputing parties) to settle the dispute through consultation or negotiation.

Article 17-17. Requirements for the Filing of a Claim.

1. An investor of a Party may, on its own account or on behalf of an enterprise owned or effectively controlled by it, submit to arbitration a claim that another Party has breached an obligation under this Chapter, provided that the investor has suffered loss or damage by reason of, or arising out of, the breach.

2. An enterprise that is an investment may not submit a claim to arbitration under this section.

3. The investor may not file a claim under this section if more than three years have elapsed from the date on which the investor knew or should have known of the alleged breach and of the loss or damage suffered.

4. An investor that initiates proceedings before any court with respect to the measure alleged to be in violation of the provisions of this Chapter may not bring a claim under this Section. Nor may the investor bring a claim under this section on behalf of an enterprise owned or controlled by the investor that has initiated proceedings before any judicial tribunal with respect to the same measure alleged to be in violation. The foregoing does not apply to the exercise of administrative remedies before the authorities implementing the allegedly violative measure themselves, as provided for in the law of the disputing Party.

5. The investor bringing a claim under this section, or the enterprise on whose behalf the claim is brought, may not institute proceedings in any court of law with respect to the allegedly violative measure.

Article 17-18. Communication and Submission of the Claim to Arbitration.

1. A disputing investor intending to submit a claim to arbitration under the terms of this Section shall so inform the disputing Party.

2. Provided that ninety days have elapsed since the communication referred to in the preceding paragraph and 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 Rules of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on March 18, 1965 ("ICSID Convention"), when 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, is a State party to the ICSID Convention; or

c) the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules"), adopted by the General Assembly of the United Nations on December 15, 1976, where the disputing Party and the Party of the investor are not a State party to the ICSID Convention, or the ICSID Convention is not available.

3. The rules specific to each of the arbitration proceedings referred to in the preceding paragraph shall apply except to the extent provided by this section.

4. Each Party consents to submit claims to arbitration in accordance with the provisions of this section.

Article 17-19. Consolidation of Proceedings.

1. If any disputing party requests consolidation of proceedings, a consolidation tribunal shall be constituted 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. Proceedings shall be consolidated in the following cases:

a) when an investor files a claim on behalf of an enterprise that is under its effective control and at the same time one or more other investors that have an interest in the same enterprise, without controlling it, file claims on their own account as a result of the same violations; or

b) where two or more claims are submitted to arbitration which raise in common questions of law and fact in respect of the same violation by a Party.

3. The consolidation tribunal shall consider such claims together, unless it determines that the interests of any of the disputing parties would be prejudiced.

Article 17-20. Applicable Law

1. Any tribunal established under this Section shall decide disputes submitted to it in accordance with this Agreement and the applicable rules of international law.

2. The Commission's interpretation of a provision of this Agreement shall be binding on any tribunal established pursuant to this section.

Article 17-21. Final Award

1. Where a tribunal established under this section makes an award unfavorable to a Party, that tribunal may only provide:

a) the payment of pecuniary damages and interest thereon; or

b) restitution of property. In such a case the award shall provide that the disputing Party may pay monetary damages, plus interest as appropriate, in lieu of restitution, stating the respective amount.

2. When the claim is made by an investor on behalf of a company:

a) the award providing for the restitution of the property shall provide that restitution or, as the case may be, substitute compensation shall be granted to the enterprise;

b) the award providing for the payment of pecuniary damages and interest thereon shall establish that the sum of money is to be paid to the company.

3. The award shall be made without prejudice to the rights of any person with a legal interest in the reparation of damages

suffered, in accordance with applicable law.

Article 17-22. Payments Under Insurance or Guarantee Contracts.

The disputing Party shall not assert as a defense, counterclaim, right of set-off or otherwise, that the disputing investor received or will receive, under an insurance or guarantee contract, indemnification or other compensation for all or part of the damages for which restitution is sought.

Article 17-23. Finality 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. The disputing Party shall abide by and comply with the award without delay and shall provide for its due execution.

3. If the Party whose investor was a party to the arbitration proceedings considers that the disputing Party has failed to comply with or abide by the final award, it may resort to the dispute settlement procedure between the Parties, established in Chapter XIX, to obtain, if appropriate, a ruling that the disputing Party abide by the final award and comply with it.

4. The disputing investor may seek enforcement of an arbitral award under the ICSID Convention, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958; (New York Convention) or the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975; (Inter-American Convention), whether or not the proceedings referred to in paragraph 3 have been instituted.

Article 17-24. Exclusions.

Measures adopted by a Party under Article 17-02, paragraph 4, or a decision prohibiting or restricting the acquisition of an investment in its territory by an investor of another Party shall not be subject to the dispute settlement mechanism provided for in this Section.

Annex to Article 17-08.

1. Colombia reserves in its entirety the application of Article 17-08 of this Chapter. Colombia shall not establish more restrictive measures on nationalization, expropriation and compensation than those in force at the entry into force of this Agreement.

2. Mexico and Venezuela will only apply the aforementioned article with respect to Colombia from the moment Colombia notifies them of the withdrawal of its reservation.

Annex to Article 17.16. Rules of procedure

Rule 1: Notice of intention to submit the claim to arbitration.

The disputing investor, at the time of communicating to the disputing Party its intention to submit a claim to arbitration, shall indicate the following points:

a) the name, corporate name and domicile of the disputing investor and the name or corporate name and domicile of the company when the claim has been made on its behalf, evidencing ownership or effective control thereof;

b) the provisions alleged to have been breached and any other applicable provisions; (c) the facts on which the claim is based; and d) the relief requested and the approximate amount of damages claimed.

Rule 2: Conditions precedent to the submission of a claim to arbitration.

1. A disputing investor on its own behalf and an investor on behalf of an enterprise may submit a claim to arbitration pursuant to Section B of this Chapter and this Annex only if:

a) in the case of the self-employed investor, the self-employed investor consents to submit to arbitration under the terms of the procedures set forth in Section B of this Chapter and this Annex;

b) in the case of the investor on behalf of an enterprise, both the investor and the enterprise consent to submit to arbitration under the terms of the procedures set forth in Section B of this Chapter and this Annex; and

c) the investor or the enterprise, or both, as the case may be, undertake in writing not to initiate proceedings before any judicial tribunal with respect to the alleged violation of this Chapter. The foregoing does not apply to the exercise of administrative remedies before the authorities that have adopted the allegedly violative measure, as provided for in the legislation of the disputing Party.

2. The consent required by this rule shall be in writing, delivered to the disputing Party and included in the submission of the claim to arbitration.

3. The consent of the investor to submit the claim to arbitration shall be deemed sufficient to meet the requirements set forth in:

a) Chapter II of the ICSID Convention and the Additional Facility Rules requiring the written consent of the Parties;

b) Article II of the New York Convention, which requires a written agreement; and

c) Article I of the Inter-American Convention, which requires an agreement.

Rule 3: Number of Arbitrators and Method of Appointment.

The tribunal shall be composed of three arbitrators. Each of the disputing parties 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. The foregoing is except as provided for the consolidation tribunal in accordance with Article 17-19 of this Chapter and notwithstanding any agreement of the disputing parties to the contrary.

Rule 4: Composition of the tribunal in the event that one of the disputing parties fails to appoint an arbitrator or fails to reach an agreement on the appointment of the chairman of the arbitral tribunal.

1. The Secretary-General of ICSID (Secretary-General) shall appoint arbitrators in arbitration proceedings in accordance with this Annex.

2. Where a tribunal, other than the consolidation tribunal, is not constituted within ninety days from the date on which the claim is submitted to arbitration, the Secretary General, at the request of any of the disputing parties, shall appoint, at his discretion, the arbitrator or arbitrators not yet appointed, but not the chairman of the tribunal, who shall be appointed in accordance with paragraph 3 of this Rule.

3. The Secretary-General shall appoint the president of the tribunal from the list of arbitrators 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 no arbitrator is available on the list to chair the tribunal, the Secretary-General shall appoint, from the ICSID Panel of arbitrators, the chairperson of the arbitral tribunal, provided that the chairperson is not a national of the disputing Party or a national of the Party of the disputing investor.

4. As of the date of entry into force of this Agreement, the Parties shall establish and maintain a list of 15 arbitrators as potential presiding arbitrators of the arbitral tribunal. Such arbitrators shall meet the qualifications set forth in the ICSID Convention. The members of the list shall be appointed by consensus without regard to their nationality.

Rule 5: Consent to the appointment of arbitrators.

For the purposes of Article 39 of the ICSID Convention and Article 7 of Part C of the Additional Facility Rules, and without prejudice to objecting to an arbitrator on grounds other than nationality:

a) the disputing Party accepts the appointment of each of the members of a tribunal established in accordance with the ICSID Convention or the 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 Additional Facility Rules only on condition that the disputing investor and, if applicable, the enterprise it represents, consent in writing to the appointment of each of the members of the tribunal.

Rule 6: Consolidation of proceedings.

1. Where a consolidation tribunal determines that the claims submitted to arbitration pursuant to section 17-17 of this chapter raise common questions of law and fact, the consolidation tribunal, in the interest of their fair and expeditious resolution, and having heard the disputing parties, may agree:

a) assume jurisdiction over, process and settle any or all claims, jointly; or

b) assume jurisdiction over, process and resolve one or more of the claims on the basis that it will contribute to the resolution of the other claims.

2. Adisputing party seeking a determination of consolidation under paragraph 1 shall request the Secretary-General of ICSID to establish a consolidation tribunal and shall specify in its request:

a) the name of the disputing Party or the disputing investors against which the cumulation agreement is sought;

b) the nature of the accumulation agreement requested; and

c) the basis on which the requested petition is supported.

3. Within 60 days from the date of the request, the Secretary-General of ICSID shall designate from the list referred to in Rule 5, paragraph 4 of this Annex the three members of the consolidation tribunal, indicating who shall preside over it. In the event that the Secretary-General of ICSID does not find the persons necessary to make these appointments from the list referred to above, the Secretary-General of ICSID shall make such appointments from the ICSID Panel of Arbitrators. If no arbitrators are available on that panel, the Secretary-General of ICSID shall make the missing appointments at his discretion. One member of the tribunal shall be a national of the disputing Party, and the other member shall be a national of the Party to which one of the disputing investors belongs. In any event, the president of the consolidation tribunal shall not be a national of the disputing Party or a national of the Party or Parties of the disputing investor or investors.

4. 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 2, may request in writing to that consolidation tribunal to be included in the request for consolidation made pursuant to paragraph 1, and shall specify in that request:

a) the name and domicile of the disputing investor and, if applicable, the name or corporate name and domicile of the company;

b) the nature of the accumulation agreement requested; and c) the grounds on which the petition is based.

The consolidation tribunal shall provide, at the expense of the investor concerned, a copy of the request for cumulation to the disputing investors against whom the cumulation agreement is sought.

5. Once the consolidation tribunal has assumed jurisdiction over a claim, the jurisdiction of the tribunal constituted to hear the claim shall cease. At the request of a disputing party, the consolidation tribunal may, pending its decision on its jurisdiction over a claim, order the arbitral tribunal constituted to hear the claim to stay the proceedings.

6. Within 15 days from the date of its receipt, the disputing Party shall send to the Commission a copy of:

a) the request for arbitration made pursuant to Article 36(1) of the ICSID Convention;

b) the notice of arbitration pursuant to Article 2 of Part C of the ICSID Additional Facility Rules;

c) the notice of arbitration under the terms of the UNCITRAL Arbitration Rules;

d) the request for cumulation made by a disputing investor; e) the request for joinder made by the disputing Party; or

f) the request for inclusion in a cumulation request made by a disputing investor. The Commission shall keep a record of the documents referred to in this paragraph.

Rule 7: Communication The disputing Party shall send to the other Parties:

a) communication of a claim that has been submitted to arbitration within 30 days from the date of submission of the claim to arbitration; and

b) if they so request, and at their own expense, a copy of the communications submitted in the arbitration proceedings.

Rule 8: Participation of a party.

Upon notice to the disputing parties, a Party may submit to any tribunal established under Section B of this Chapter its views on a question of interpretation of this Agreement.

Rule 9: Documentation.

1. Each Party shall be entitled to receive, upon request and at its own expense, from the disputing Party a copy of:

a) evidence offered to any court established pursuant to section B of this chapter; and

b) the written communications submitted by the disputing parties.

2. The Party receiving information pursuant to paragraph 1 shall treat such information as confidential.

Rule 10: Place of arbitration proceedings.

Any tribunal established under Section B of this Chapter shall, unless the disputing parties agree otherwise, conduct the arbitral proceedings in the territory of one of the Parties.

Rule 11: Interpretation of annexes of reservations and exceptions.

1. The interpretation of the Commission with respect to any provision of this Agreement shall be binding on any tribunal established pursuant to section B of this chapter.

2. The arbitral tribunal shall, at the request of the Party, request the interpretation of the Commission where that Party claims, as a defense, that a measure alleged to be in breach of this Agreement falls within the scope of a reservation or exception set forth in any of its annexes. If the Commission does not submit its interpretation in writing within sixty days of the delivery of the request, the arbitral tribunal shall decide the matter.

Rule 12: Provisional or precautionary measures.

The tribunal constituted under Section B of this Chapter may take provisional measures to establish its jurisdiction or to preserve the rights of the disputing parties. The tribunal may not order injunctive relief or the suspension of the application of the measure alleged to be in breach of this Agreement.

Rule 13: Finality and enforcement of the award.

1. The disputing party may request enforcement of a final award provided that: a) in the case of a final award rendered under the ICSID Convention:

(i) 120 days have elapsed since the date on which the award was rendered without any disputing party having requested the revision or annulment of the award; or

(ii) the review or annulment proceedings have been concluded; and

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

(i) three months have elapsed since the date on which the award was rendered without any disputing party having commenced revision or annulment proceedings; or

(ii) a request for revision or annulment of the award has been dismissed or declared admissible by a tribunal of the disputing Party and this decision cannot be appealed.

2. For the purposes of Article 1 of the New York Convention and Article 1 of the Inter-American Convention, a claim submitted to arbitration under Section B of this Chapter shall be deemed to arise out of a commercial relationship or transaction.

Rule 14: General provisions.

1. Aclaimis considered submitted to arbitration under the terms of section B of this chapter when:

a) the request for arbitration under Article 36(1) of ICSID has been received by the Secretary-General;

b) the notice of arbitration, in accordance with 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.

2. Delivery of communications and other documents to a Party shall be made to the national section of that Party at the address referred to in Article 20-02, paragraph 1.

3. Final awards will be published only if there is a written agreement between the disputing parties.

Chapter XVIII. Intellectual Property

Section A. General Provisions.

Article 18-01. Basic Principles.

1. Each Party shall grant in its territory to nationals of another Party adequate and effective protection and defense of intellectual property rights under the same conditions as to its own nationals and shall ensure that measures designed to defend such rights do not in turn become barriers to legitimate trade.

2. With respect to the existence, acquisition, scope, maintenance, use and enforcement of intellectual property rights referred to in this Chapter, any advantage, favor, privilege or immunity granted by a Party to the holders of intellectual property rights of any other country shall be accorded immediately and unconditionally to the holders of intellectual property rights of the other Parties.

3. Each Party may provide in its legislation broader protection for intellectual property rights than that required by this Chapter, provided that such protection is not inconsistent with this Chapter or with the commitments undertaken by the Parties in international conventions.

4. Nothing in this Chapter shall prevent each Party from providing in its legislation for licensing practices or conditions that, in particular cases, may constitute an abuse of industrial property rights with an adverse effect on competition in the relevant market. Each Party may accept or maintain, in accordance with other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

5. No Party may grant licenses for the reproduction or translation of works protected in accordance with Article 18-03, when such reproduction or translation would be contrary to the normal exploitation of the work or would unreasonably prejudice the economic interests of the owner of the respective right.

6. The Parties shall make every effort to accede to the Paris Convention for the Protection of Industrial Property (1967 Act and subsequent amendments thereto), if they are not already party thereto on the date of entry into force of this Agreement.

Section B. Copyright and Related Rights.

Article 18-02. Basic Principles.

1. In order to provide adequate and effective protection and enforcement of copyright and related rights, each Party shall apply, at a minimum, this Chapter and the substantive provisions of:

a) Berne Convention for the Protection of Literary and Artistic Works, Paris Act, 1971;

c) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Rome, 1961;

d) International Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, Geneva, 1971.

2. No Party may require the owners of copyright and related rights to comply with any formality or requirement as a condition for the enjoyment and exercise of their respective rights.

Article 18-03. Category of Works.

1. Each Party shall protect the works listed in Article 2 of the Berne Convention, including any other works already known or to be known, which constitute an original expression within the spirit of the Berne Convention, among them:

a) computer programs (software), as literary works within the meaning of the Berne Convention; and

b) compilations of facts or data, expressed by any form or process, known or to be known, provided that, by reason of the selection or arrangement of their contents, they constitute creations of an intellectual nature.

2. The protection provided by each Party under paragraph 1, subparagraph b), does not extend to the facts or data themselves, nor does it affect any copyright in pre-existing works that are part of the compilation.

Article 18-04. Content of Copyrights.

1. In addition to the moral rights recognized in their respective legislations, the Parties undertake that an adequate and effective protection of copyrights must include, among other economic rights, the following:

a) the right to prevent the importation into the territory of the Party of copies of works made without the authorization of the owner;

b) the right to authorize or prohibit the first public distribution of the original and each copy of the work by sale, rental or any other means of distribution to the public;

c) the right to authorize or prohibit the communication of the work to the public, understood as any act by which a plurality of persons not exceeding the domestic sphere may have access to the work, by means of its dissemination by any process or in any form, known or to be known, of the signs, words, sounds or images; and

d) the right to authorize or prohibit the reproduction of the work by any process or in any form, known or to be known. Each Party shall provide that the introduction on the market of the original or a copy of the work, including computer programs (software), with the consent of the right holder, shall not exhaust the rental right.

2. The exercise of the rights referred to in this article does not constitute an obstacle to legitimate trade.

3. Each Party shall provide that for copyright and related rights:

a) the person who holds economic rights by any title may freely and separately transfer them under the terms of the legislation of each Party for the purposes of exploitation and enjoyment by the holder; and

b) any person who holds economic rights by virtue of a contract, including employment contracts whose object is the creation of any kind of work or the making of phonograms, has the capacity to exercise those rights in his own name and to enjoy fully the benefits derived from those rights.

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 work or unreasonably prejudice the legitimate interests of the right holder.

5. Any assignment, authorization or license to use the economic rights shall be limited to the forms of exploitation agreed in the contract, unless the Parties have expressly agreed otherwise. Each Party shall provide for the adoption of the necessary measures to ensure the protection of the rights with respect to the forms of exploitation not provided for in the contract.

6. Where the ownership of the economic rights in a literary or artistic work is held by a legal person, the term of protection shall not be less than fifty years, counted from the first publication of the work or, failing that, from its disclosure or performance, as the case may be.

Article 18-05. Performers' Rights.

1. The rights of performers shall be recognized in accordance with the international treaties to which each Party is a party and in accordance with its legislation.

2. The term of protection of the rights of performers may not be less than fifty years, counted from the date on which the performance took place, or from the date of its fixation, as the case may be.

Article 18-06. Phonograms.

1. Without prejudice to the rights established in the Rome Convention, producers of phonograms shall have:

a) the right to authorize or prohibit the direct and indirect reproduction of their phonograms;

b) the right to authorize or prohibit the importation into the territory of the Party of copies of the phonogram made without the authorization of the producer;

c) the right to authorize or prohibit the first public distribution of the original and each copy thereof, by sale, rental or any other means of distribution to the public. This right of distribution is not exhausted with the introduction to the market of legitimate copies of the phonogram; and

d) the right to receive remuneration for the use of the phonogram or copies thereof for commercial purposes, when the legislation of each Party so provides. This remuneration may be shared with the performers under the terms of the legislation of the respective Party.

2. 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, nor unreasonably prejudice the legitimate interests of the right holder.

3. The term of protection of the rights of phonogram producers may not be less than fifty years, counted from the end of the year in which the first fixation was made.

4. The protection provided for in this Article shall leave intact and shall in no way affect the protection of copyright in works. Therefore, none of the provisions provided for in this Article may be interpreted as undermining such protection.

Article 18-07. Rights of Radio Broadcasting Organizations.

1. The broadcasting referred to in the Rome Convention includes, inter alia, the production of program- carrying satellite signals destined for a broadcasting or telecommunication satellite; it also includes the broadcasting to the public by an entity that broadcasts or disseminates broadcasts of another entity received through any of the aforementioned satellites.

2. The retransmission by a transmitting entity other than the transmitting entity of origin may be by wireless broadcasting of signs, sounds or images, or by wire, cable, optical fiber or other analogous procedure.

3. Each Party may establish exceptions in its legislation to the protection granted by this section in the following cases:

a) when the use is for private use;

b) when short excerpts have been used in connection with information on current events;

c) in the case of an ephemeral fixation made by a broadcasting organization by its own means and by its own broadcasts; and

d) when the use is exclusively for teaching or scientific research purposes.

4. The term of protection of the rights of broadcasting organizations may not be less than fifty years, counted from the end of the year in which the broadcast was made.

5. Within one year after the entry into force of this Agreement, each Party shall establish as an offense:

a) the manufacture, importation, sale, lease or any act that makes it possible to have a device or system that is of primary assistance in decrypting an encrypted program-carrying satellite signal, without the authorization of the legitimate distributor of that signal; or

b) the retransmission, fixation, reproduction or dissemination of an emission of a broadcasting organization, through any sound or audiovisual means, without the prior and express authorization of the owner of the emissions, as well as the reception, dissemination or distribution by any means, of the broadcasting emissions without the prior and express authorization of the owner.

6. In any case, the conduct referred to in paragraph 4, subparagraphs a) and b), shall give rise to civil liability, whether or not in conjunction with criminal liability, in accordance with the legislation of each Party.

Section C. Industrial Property

Article 18-08. Subject Matter of Trademark Protection

1. The Parties may establish as a condition for the registration of trademarks, that the signs be visible or perceptible if they are susceptible of graphic representation. A trademark shall be understood as any sign capable of distinguishing in the market the goods or services produced or marketed by one person from the identical or similar goods or services produced or marketed by another person. Collective marks shall also be understood as trademarks.

2. The right to the exclusive use of the trademark shall be acquired by registration of the same before the respective competent national office, without prejudice that any Party may recognize prior rights, including those sustained on the basis of use, in accordance with its legislation.

3. The nature of the goods or services to which a trademark is to be applied shall in no case constitute an obstacle to the registration of the trademark.

Article 18-09. Rights Conferred by Trademarks.

1. The owner of a registered trademark shall have the right to prevent all persons who do not have 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, when such use generates a likelihood of confusion. A likelihood of confusion shall be presumed when an identical or similar sign is used for identical or similar goods or services.

2. When in two or more Parties there are registrations 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 with that trademark in the territory of the other Party where it is also registered is prohibited, unless the owners of those trademarks enter into agreements that allow such marketing.

3. In the event of the agreements referred to in paragraph 2, the parties shall adopt the necessary provisions to avoid the confusion of the public as to the origin of the goods or services in question, including the identification of the origin of the goods or services in question in prominent and proportional characters for the due information of the consuming public. Such agreements shall comply with the rules on commercial practices and promotion of competition and shall be registered with the competent national offices.

4. 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.

5. A trademark shall be understood to be in use when the goods or services that it distinguishes have been placed in commerce or are available on the market under that trademark, 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.

6. When it is done in good faith and does not constitute use as a trademark, third parties may, without the consent of the owner of the registered trademark, use in the market their own name, pseudonym or address, a geographical name, or any other certain indication relating to the species, quality, quantity, destination, value, place of origin or time of production of their goods or of the rendering of their services or other characteristics thereof, provided that:

a) are clearly distinguishable from a registered trademark;

b) are limited to information purposes;

c) are not likely to mislead the public as to the origin of the goods or services; and

d) do not constitute acts of unfair competition.

7. Provided that the use made by a third party of a registered trademark is in good faith, is limited to the purpose of informing the public, is not likely to mislead or confuse the public as to the business origin of the respective goods and does not constitute an act of unfair competition, the registration of the trademark does not confer on its owner the right to prohibit the use of the trademark by that third party for:

a) advertise, offer for sale or indicate the existence or availability of lawfully marked goods or services in the territory of the Party that granted the registration; or

b) indicate the compatibility or suitability of spare parts or accessories usable with the goods of the registered trademark.

8. The owner of the registered trademark may take appropriate action against third parties who use in the market, without his consent, an identical or similar trademark or sign to distinguish identical or similar goods or services, when such identity or similarity misleads the public.

Article 18-10. Well-known Trademarks.

1. Article 6 bis of the Paris Convention shall apply, with appropriate modifications, also to service marks. It shall be understood that a trademark is well known in a Party when the relevant sector of the public or trade circles of that Party, knows the trademark as a consequence of the commercial activities developed in a Party or outside of them, by a person who uses that trademark in relation to his goods or services. For the purpose of proving the notoriety of the trademark, all means of proof admitted in the Party concerned may be used.

2. The Parties shall not register as a trademark those signs equal or similar to a well-known trademark, to be applied to any good or service, in any case in which the use of the trademark by the applicant for its registration could create confusion or 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 when the applicant for registration is the person referred to in paragraph 1.

3. The person bringing the corresponding action against a trademark registration granted in contravention of paragraph 2 shall prove that he is the owner of the well-known trademark he is claiming.

Article 18-11. Signs Not Registrable as Trademarks.

The Parties may refuse the registration of trademarks that are contrary to morality and good customs, that reproduce national symbols or that are misleading.

Article 18-12. Publication of the Application or Registration of Trademarks.

Under the terms and conditions established by the legislation of each Party, the competent national office shall order the publication, either of the application or of the registration, as the case may be, so that any person having a legitimate interest may file observations on the application or exercise the corresponding actions against the registration.

Article 18-13. Cancellation, Revocation or Nullity of Registration of Trademarks.

1. The competent national office of each Party, in accordance with its legislation, shall cancel or declare lapsed the registration of a trademark at the request of any interested person, when without just cause the trademark has not been used in the Party in which the registration was granted, by the owner or his licensee, during the three consecutive years preceding the date on which the corresponding action is initiated.

2. The following, among others, shall be understood as means of proof of the use of the trademark:

a) commercial invoices proving the regularity and quantity of marketing, at least during the year prior to the date of initiation of the corresponding action;

b) the inventories of the goods identified with the trademark whose existence is certified by an auditor or notary public that proves regularity in production or sales, or both, at least during the year prior to the date of initiation of the corresponding action;

c) any other means of proof permitted by the legislation of the Party where the corresponding action is requested.

3. Proof of use of the mark shall correspond to the owner of the registration. The registration may not be cancelled or declared lapsed when the owner of the mark presents valid reasons supported by the existence of obstacles to use. The Parties shall recognize as valid reasons the circumstances referred to in article 18-09, paragraph 4.

4. In accordance with the legislation of each Party, the respective office or the competent national authority, as the case may be, shall cancel or declare the invalidity of the registration of a trademark, at the request of the legal owner, when it is identical or similar to a trademark that was well known, in the terms of Article 18-10, at the time the registration was applied for.

Article 18-14. Duration of Trademark Protection.

The registration of a trademark shall have a term of ten years counted from the date of the filing of the application or the date of its grant and may be renewed indefinitely for successive periods of ten years, under the terms established by the legislation of each Party.

Article 18-15. Licenses and Assignment of Trademarks.

The Parties may establish conditions for the licensing and assignment of trademarks, it being understood that compulsory licenses of trademarks shall not be allowed and that the owner of a registered trademark shall have the right to assign it, with or without the transfer of the company to which the trademark belongs.

Article 18-16. Protection of Appellations of Origin and Geographical Indications

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 for in its legislation, at the request of the competent authorities of the Party where the appellation of origin or geographical indication 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, the Parties 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 product;

b) any other use that constitutes an act of unfair competition within the meaning of Article 10 bis of the Paris Convention.

Article 18-17. Protection of Industrial Secrets.

1. Whoever lawfully has control of a trade secret shall be protected against the disclosure, acquisition or use of such secret without his consent, in a manner contrary to fair trade practices, by third parties, to the extent 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 it has taken reasonable measures to keep it secret.

2. The information of an industrial secret must necessarily refer to the nature, characteristics or purposes of the goods, to the methods or processes of production, or to the means or forms of distribution or commercialization of goods or rendering of services.

Article 18-18. Information Not Considered as Industrial Secret.

1. For the purposes of this chapter, information that is in the public domain, that which is obvious to a person skilled in the art or that which must be disclosed by law or court order shall not be considered an industrial secret.

2. Information provided to any authority by a person in possession of such information shall not be deemed to be in the public domain or to be disclosed by law when it is provided for the purpose of obtaining licenses, permits, authorizations, registrations or any other acts of authority.

Article 18-19. Support of the Industrial Secret.

The information considered as industrial secret must be contained in documents, electronic or magnetic media, optical discs, microfilms, films or other similar elements.

Article 18-20. Validity of Trade Secret Protection.

The protection granted in accordance with article 18-17 shall last as long as the conditions set forth therein exist.

Article 18-21. Obligations of the User of a Trade Secret.

1. Whoever keeps a trade secret may transmit it or authorize its use to a third party. The authorized user shall be under the obligation not to disclose the industrial secret by any means. He may only transfer it or authorize its use with the express consent of the person who authorized the use of that secret.

2. In the agreements in which know-how, technical assistance or provision of basic or detailed engineering are transferred, confidentiality clauses may be established to protect the industrial secrets contained therein. Such clauses shall specify the aspects considered as confidential.

3. Any person who, by reason of his work, employment, position, post, profession or business relationship, has access to an

industrial secret about the confidentiality of which he has been warned, shall refrain from using and disclosing it without just cause and without the consent of the person keeping such secret or its authorized user.

4. Violation of the provisions of this article shall subject the offender to the corresponding criminal and administrative sanctions, as well as to the obligation to compensate the damages caused by his conduct, in accordance with the legislation of each Party.

Article 18-22. 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 whenever their generation involves considerable effort, except when the publication of such data is necessary to protect the public or when 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 date of entry into force of this Agreement, that no person other than the person that submitted the data may, without the latter's authorization, rely on such data in support of an application for approval of a good for a reasonable period of time 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.

Article 18-23. Protection of Plant Varieties.

In accordance with its legislation, each Party shall grant protection to plant varieties. The Parties shall endeavor, to the extent that their systems are compatible, to comply with the substantive provisions in force of the International Convention for the Protection of New Varieties of Plants (UPOV Convention).

Section D. Technology Transfer.

Article 18-24. Promotion of 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 anti-competitive.

Section E. Enforcement of Intellectual Property Rights.

Article 18-25. Application of Existing Guarantees.

This Chapter does not impose any obligation on the Parties to establish a judicial system for the enforcement of intellectual property rights, different from that already existing for the enforcement of laws in general. Nothing in this chapter creates any obligation with respect to the allocation of financial resources between intellectual property enforcement and general law enforcement.

Article 18-26. Guiding Principles.

The Parties declare that adequate and effective protection of intellectual property rights must be inspired by principles of fairness, promptness, procedural efficiency and effectiveness and respect for due process. To this end, the Parties shall ensure such protection in accordance with the following rules, applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide safeguards against inappropriate or excessive application of procedures.

Article 18-27. Essential Procedural Guarantees.

Each Party undertakes that its legislation will ensure that:

a) the parties to a proceeding are duly notified of all procedural acts and the guarantees of hearing and legality are respected;

b) the parties are duly represented in a proceeding;

c) include the means to identify and protect confidential information;

d) evidence in the possession of the opposing party that is relevant to the resolution of the dispute may be introduced in the proceeding;

e) any judicial decision shall be based on the evidence regularly and timely submitted to the process, ex Officio or at the request of a party;

f) the judgments and other acts that put an end to the process shall contain an analysis of the facts of the controversy, the evidence as a whole, the pertinent legal norms and the arguments of the parties, and based on this analysis shall resolve the petitions, in such a way that no issue remains pending between the parties on the same facts;

g) judgments and other acts that terminate the process, as well as precautionary or precautionary measures may be subject to appeal, review or other legally applicable appeals;

h) the right holder is granted an adequate payment as compensation for the damage suffered as a result of the infringement. Where the infringement consists of the use of an intellectual property right, the economic value of the use shall be considered, among other factors.

Article 18-28. Measures to Prevent or Repair Damage.

1. The legislation of each Party shall empower the competent authority to order, promptly and effectively, the following measures:

a) an order to the alleged infringer or a third party to immediately cease the unlawful activity, including an order to prevent the goods infringing an intellectual property right from entering the channels of commerce within its jurisdiction. In the case of imported goods, the order may be issued immediately after customs clearance. In the case of trademarks, the mere removal of a trademark unlawfully affixed to the goods shall not be sufficient to permit the circulation of the goods, except in exceptional cases provided for in the legislation of that Party. No Party shall be obliged to grant this treatment in respect of protected subject matter that was acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing with such subject matter would involve the infringement of an intellectual property right;

b) the seizure or preventive seizure, as the case may be, of property infringing any of the rights recognized in this chapter;

c) seizure, confiscation or sequestration of the instruments used for the commission of the offense;

d) the preservation of evidence related to the alleged infringement;

e) the adoption of the measures referred to in this article, without having heard the other party, provided that adequate security or guarantee is given and there is a sufficient degree of certainty that:

(i) the applicant is the right holder; ii) the applicant's right is being infringed, or that infringement is imminent; and

iii) any delay in issuing such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk that evidence is being destroyed;

f) the notification without delay to the affected party, immediately after the execution of the measures in the cases provided for in subparagraph e). These measures shall be revoked or rendered ineffective, at the request of the affected party, when the proceedings on the merits of the case have not been initiated within the period of time determined by the legislation of each Party;

g) ordering the applicant, upon request of the respondent, to pay adequate compensation for the damage caused by such measures, when such measures are revoked, lapse due to any act or omission of the applicant, or it is subsequently determined that there was no infringement or threat of infringement of an intellectual property right;

h) requiring an applicant for precautionary or preventive measures to provide information necessary for the identification of the relevant assets by the authority that will carry out the precautionary or preventive measures.

2. When considering the issuance of the aforementioned measures, the judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the measures ordered, as well as the possible impact on the rights of third parties.

Article 18-29. Compensation and Costs.

1. Each Party shall empower its judicial authorities to order:

a) the payment to the aggrieved party of adequate compensation for the damages suffered as a result of the violation;

b) that the infringer shall pay the costs of the proceedings incurred by the plaintiff, in accordance with the applicable legislation;

c) the necessary measures to ensure that the goods constituting an infringement of the law are withdrawn from commerce, liquidated out of commercial channels, or destroyed, without compensation, in such a way as to minimize the risk of future infringements;

d) that the materials and instruments used predominantly in the production of the illicit goods are, without compensation, destroyed or placed out of the commercial circuits, in the terms provided for in its legislation.

2. Each Party may, at least with respect to copyrighted works and phonograms, authorize the judicial authorities to order the recovery of profits or the payment of pre-determined damages, or both, even if the infringer did not know or had no reasonable grounds to know that he was engaged in infringing activity.

Article 18-30. Administrative Procedures.

The principles contained in this section shall apply, as appropriate, if either Party provides in its legislation for administrative procedures for the protection of the rights recognized in this chapter.

Article 18-31. Criminal Proceedings.

1. The Parties shall provide in their legislation sufficient deterrent measures of imprisonment, fine or both, to punish infringements of the rights recognized in this Chapter, equivalent to the level of penalties that apply to offenses of similar magnitude. In any case, they shall establish criminal sanctions when there is fraudulent counterfeiting of trademarks or copies protected by copyright on a commercial scale.2

2. Criminal penalties shall include the seizure and confiscation of the goods that constitute an infringement of the law, as well as of the materials or instruments predominantly used in the production of the illicit goods, and these, without any compensation, shall be destroyed or placed out of commerce under the terms provided by the legislation of each Party.

Article 18-32. Enforcement of Intellectual Property Rights at the Border.

1. Each Party shall adopt procedures so that the holder of a right who has valid reasons to believe that the importation of goods identified with counterfeit trademarks or of unlawful copies protected by copyright or related rights is being prepared, may submit to the competent authorities, administrative or judicial, an application for the purpose of having the customs authorities order the suspension of the release of such goods for free circulation. No Party shall be obliged to apply such procedures to goods in transit.

2. Each Party may authorize the filing of an application referred to in paragraph 1 with respect to goods involving other infringements of intellectual property rights, provided that the requirements of this Chapter are met.

3. Each Party may establish similar procedures relating to the suspension by the customs authorities of the release of goods destined for export from its territory.

Article 18-33. Withholding Procedures Initiated Ex Officio.

Where a Party requires its competent authorities to act on its own initiative and suspend the release of goods for which those authorities have prima facie evidence that they infringe 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 these powers;

b) the importer and the right holder shall be promptly notified by the competent authorities of the Party of the suspension. Where the importer has requested a review of the suspension before the competent authorities, the suspension shall be subject, with appropriate modifications, to Article 18-28, paragraph 1, subparagraph h), and paragraph 2;

c) The Party shall only exempt public authorities and officials from liability for appropriate remedial measures for acts

performed or disposed of in good faith.

Article 18-34. Applicable Principles.

All enforcement provisions contained in this section, where applicable, are applicable to the enforcement of intellectual property rights at the border.

Each Party may exclude from the application of measures for the defense of intellectual property rights at the border, small quantities of goods that are not of a commercial nature and are part of the personal luggage of travelers or are sent in small, non-repeated consignments.

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 consultation and shall endeavor to reach a mutually satisfactory resolution of any matter that may affect its operation.

Article 19-02. Scope of Application.

1. Except as otherwise provided in this Agreement, this Chapter shall apply:

a) to the prevention or settlement of all disputes between the Parties concerning the application or interpretation of this Agreement; and

b) where a Party considers that a 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.

2. If a Party increases an import tax, the Parties may negotiate an appropriate compensation mechanism before initiating a dispute settlement procedure.

Article 19-03. Dispute Settlement Under GATT.

1. Any dispute arising in connection with the provisions of both this Agreement and the GATT or the agreements negotiated thereunder may be settled in either forum at the option of the complaining Party.

2. Before the complaining Party initiates dispute settlement proceedings under the GATT against another Party on grounds substantially equivalent to those that it could invoke under this Agreement, the following rules shall apply:

a) the complaining Party shall communicate its intention to do so to the Party or Parties other than the Party against which it intends to initiate the proceeding; and

b) if one or more of the Parties that have received the respective communication wish to have recourse in respect of the same matter to the dispute settlement procedure of this chapter, they and the complainant shall endeavor to agree on a single forum.

3. Once a Party has initiated a dispute settlement proceeding under Article 19-06 or one under the GATT, it may not resort to the other forum with respect to the same matter.

4. For the purposes of this Article, dispute settlement procedures under the GATT shall be deemed to have been initiated when a Party requests:

a) the establishment of a panel in accordance with GATT Article XXIII:2; or

b) investigation by a Committee established in the agreements negotiated in accordance with the GATT.

Article 19-04. Dispute Settlement Under the Cartagena Agreement.

1. The Parties shall be subject to the following rules of jurisdiction:

a) disputes arising between Colombia and Venezuela in connection with the provisions of this Treaty and the legal system of

the Cartagena Agreement shall be subject to the jurisdiction of the organs of the Cartagena Agreement;

b) disputes arising between Colombia and Venezuela in connection with the commitments undertaken exclusively in this Agreement shall be resolved in accordance with the provisions of this Chapter;

c) disputes arising between Mexico and any of the other Parties with respect to the provisions of this Agreement shall be resolved in accordance with the provisions of this Chapter; and

d) disputes arising between the three Parties in connection with the provisions of this Agreement shall be resolved in accordance with the provisions of this Chapter.

2. The submission of a dispute to the competence of the organs of the Cartagena Agreement shall not affect any rights Mexico may have under this Agreement.

Article 19-05. Consultations.

1. Any Party may request in writing to the other Parties consultations with respect to any measure or any other matter that it considers may affect the operation of this Agreement.

2. The Party initiating consultations pursuant to paragraph 1 shall deliver the request to the responsible national bodies of the other Parties.

3. The third Party that considers it has a substantial interest in the matter shall have the right to participate in the consultations by submitting a communication to the responsible national bodies of the other Parties.

4. The consulting Parties:

(a) provide such information as may permit consideration of how the measure or any other matter may affect the operation of this Agreement;

(b) shall endeavor to avoid any solution that adversely affects the interests of the third Party; and

(c) treat confidential information exchanged during consultations in the same manner as the Party that provided it.

Article 19-06. Intervention of the Commission, Good Offices, Conciliation and Mediation.

1. Any consulting Party may request in writing that the Commission be convened whenever a matter is not resolved pursuant to Article 19-05 within forty-five days of the 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 article 5-30 or article 14-18.

3. The Party initiating the procedure shall mention in the request the measure or any other matter that is the subject of the complaint, shall indicate the provisions of this Agreement that it considers applicable and shall deliver the request to the responsible national bodies of the other Parties.

4. The Commission shall meet within ten days of the delivery of the request and, with a view to reaching a mutually satisfactory resolution of the dispute, may:

a) to convene technical advisors or create such working groups or expert groups as it deems necessary;

b) resort to good offices, conciliation, mediation or other dispute resolution procedures; or c) to formulate recommendations.

5. The Commission shall have the authority to join two or more proceedings relating to the same measure that are submitted to it under this article. The Commission may join two or more proceedings relating to other matters before it under this article, when it considers it appropriate to examine them jointly.

Article 19-07. Recourse to the Arbitral Tribunal.

1. Any consulting Party may request in writing the constitution of an arbitral tribunal when the Commission has met in accordance with Article 19-06, paragraph 4, and the matter has not been resolved within the time limit:

a) forty-five days following the meeting; or

b) forty-five days following the day on which the Commission has met to deal with the most recent matter submitted to it, when several proceedings have been joined in accordance with article 19-06, paragraph 5.

2. The requesting Party shall deliver the request to the responsible national bodies of the other Parties. Upon delivery of the request, the Commission shall establish an arbitral tribunal.

3. Where the third Party considers that it has a substantial interest in the matter, it shall have the right to participate as a complaining Party upon communication of its intention to intervene to the responsible national bodies of the disputing Parties. The communication shall be delivered as soon as possible, but in no case later than seven days from the date on which one of the Parties has delivered the request for the establishment of the arbitral tribunal.

4. A third Party that decides not to intervene as a complaining Party under paragraph 3 shall, in respect of the same matter and in the absence of a significant change in economic or commercial circumstances, refrain from initiating dispute settlement proceedings under paragraph 3:

a) this Treaty; or

b) the GATT, by invoking grounds substantially equivalent to those that such Party may invoke under this Agreement.

Article 19-08. List of Arbitrators.

1. The Commission shall compile a list of up to thirty individuals with the necessary qualities and willingness to serve as arbitrators.

2. The members of the list:

a) have knowledge or experience in law, international trade, other matters relating to this Agreement, or the settlement of disputes arising under international trade agreements;

b) shall be appointed strictly on the basis of their objectivity, reliability and good judgment;

c) shall be independent of, and not bound by, and shall not receive instructions from the Parties; and

d) comply with the Code of Conduct established by the Commission.

Article 19-09. Constitution of the Arbitral Tribunal.

1. When there are two disputing Parties, the following procedure shall apply:

a) the arbitral tribunal shall be composed of five members;

b) the disputing Parties shall endeavor to designate the chairman of the arbitral tribunal within fifteen days of the delivery of the request for its composition. If the disputing Parties fail to reach agreement within this period, one of them, chosen by lot, shall designate the chairman within five days. The individual designated as chairman:

(i) may not be of the nationality of the designating Party; and

(ii) in the case of disputes referred to in Article 19-04, paragraph 1(c), may not be of the nationality of any Party to this Treaty;

c) within fifteen days after the election of the chairperson, each disputing Party shall select two arbitrators who are nationals of the other disputing Party; and

d) if a disputing Party fails to select an arbitrator within that period, the arbitrator shall be selected by lot from among the members of the list who are nationals of the other disputing Party.

2. When there are three disputing Parties, the following procedure shall apply:

a) the arbitral tribunal shall be composed of five members;

b) the disputing Parties shall endeavor to agree on the designation of the chairman of the arbitral tribunal within fifteen days of the delivery of the request for its composition. If the disputing Parties fail to reach agreement within this period, a choice shall be made by lot as to whether the respondent Party or the claimant Parties shall designate the chairperson, who

shall be selected within ten days. The individual selected as chairperson may not be of the nationality of the Party or Parties appointing him/her;

c) within fifteen days after the selection of the chairperson, the Party complained against shall select two arbitrators, each of whom shall be a national of each of the complaining Parties. The Claimant Parties shall select two arbitrators who are nationals of the Party complained against; and

d) if any disputing Party fails to select an arbitrator within that period, the arbitrator shall be appointed by lot in accordance with the nationality criteria in c).

3. Arbitrators shall normally be chosen from the list referred to in Article 19-08.

Article 19-10. Challenge

Any disputing Party may, within fifteen days after the proposal is made, file a challenge without stating a reason against any individual not on the list referred to in Article 19-08 who is proposed as arbitrator.

Article 19-11. Remuneration and Payment of Costs.

1. The Commission shall fix the amounts of remuneration and expenses to be paid to the arbitrators.

2. The remuneration of the arbitrators, their transportation and lodging costs, and all general expenses of the arbitral tribunal shall be covered in equal proportions by the disputing Parties.

3. Each arbitrator 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.

Article 19-12. Rules of Procedure.

The Commission shall establish Rules of Procedure to be applied by arbitral tribunals constituted in accordance with this chapter. These rules shall include, among others, provisions regarding the Code of Conduct for arbitrators. In drawing up the rules, the Commission shall take into consideration the following principles:

a) the proceedings shall guarantee at least the right to a hearing before the arbitral tribunal, as well as the opportunity to present written pleadings and replies or answers; and

b) the hearings before the arbitral tribunal, the deliberations and the preliminary decision, as well as all writings and communications with the arbitral tribunal, shall be confidential.

Article 19-13. Participation of the Third Party.

The non-disputing Party, upon delivery of communications to the responsible national bodies of the disputing Parties, shall have the right to attend all hearings, to make written and oral submissions to the arbitral tribunal and to receive copies of the written submissions of the disputing Parties.

Article 19-14. Preliminary Decision.

1. Unless otherwise agreed by the disputing Parties, within ninety days after the appointment of the last arbitrator, the arbitral tribunal shall submit to the disputing Parties a preliminary decision containing:

a) findings of fact;

b) a determination as to whether the measure in question is inconsistent with the obligations under this Agreement, or is a cause of nullification or impairment within the meaning of the Annex to Article 19-02; and

c) the draft of the operative part.

2. The disputing Parties may submit written comments to the arbitral tribunal on the preliminary decision within fourteen days of its submission.

3. Inthe case referred to in paragraph 2, after examining the written observations, the arbitral tribunal may, on its own motion or at the request of a disputing Party:

a) to carry out any due diligence it deems appropriate;

b) request the comments of any disputing Party or of any Party that has provided the communication referred to in Article 19-13; and

c) reconsider its preliminary decision.

Article 19-15. Final Decision.

1. The arbitral tribunal shall submit to the Commission a final decision and, if applicable, the saved votes on the issues on which there has not been a unanimous decision, within thirty days from 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 the minority.

3. The final decision of the arbitration tribunal shall be made known fifteen days after its communication to the Commission.

Article 19-16. Compliance with the Final Decision.

1. The final decision of the arbitral tribunal shall be binding on the disputing Parties under the terms and within the time limits ordered by the 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.

Where the decision of the arbitral tribunal finds that the measure is grounds for nullification and 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 disputing Parties.

Article 19-17. 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 rules:

a) that a measure is inconsistent with the obligations of this Agreement and the Party complained against fails to comply with the final determination within the period of time fixed by the arbitral tribunal; or

b) that a measure is a cause for annulment or impairment within the meaning of the Annex to Article 19-02 and the disputing 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 disputing 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:

a) the complaining Party 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 that has been the cause of nullification or impairment within the meaning of the Annex to Article 19-02; and

b) the complaining Party that considers that it is not feasible or effective to suspend benefits in the same sector or sectors, may suspend benefits in other sectors.

4. At the written request of any disputing Party, communicated to the responsible national bodies of the other Parties, the Commission shall establish an arbitral tribunal to determine whether the level of benefits that a complaining Party has suspended pursuant to paragraph 1 is manifestly excessive. To the extent possible, the arbitral tribunal shall be composed of the same members as the tribunal that rendered the final decision referred to in Article 19-15.

5. The arbitral tribunal constituted for the purposes of paragraph 4 shall render its final decision within sixty days after the appointment of the last arbitrator, or within such other period of time as the Parties may agree.

Article 19-18. Interpretation by the Commission.

1. The Commission shall endeavor to agree, as soon as possible, on an appropriate interpretation or response when:

(a) a Party considers that a question of interpretation or application of this Agreement arising or arising in a judicial or administrative proceeding of another Party warrants interpretation by the Commission; or

(b) a Party receives a request for an opinion on a question of interpretation or application of this Agreement from a court or administrative body of a Party.

2. The Party in whose territory the court or administrative body is located shall submit to the latter any interpretation agreed upon by the Commission, in accordance with the procedures of that forum.

3. When the Commission is unable to reach an agreement, any Party may submit its own opinion to the court or administrative body, in accordance with the procedures of that forum.

Article 19-19. Alternative Means of Dispute Resolution.

1. To the extent possible, each Party shall promote and facilitate recourse to arbitration and other alternative means of settling international commercial disputes between private parties.

2. To this end, each Party shall provide for appropriate procedures to ensure the enforcement of arbitration agreements and the recognition and enforcement of arbitral awards rendered in such disputes. Such procedures shall take into consideration the provisions of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

3. The Commission may establish an Advisory Committee on Private Commercial Disputes composed of persons having expertise or experience in the resolution of private international commercial disputes. The Committee shall submit reports and recommendations to the Commission on general questions referred to it by the Commission concerning 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. The Parties may have recourse to the dispute settlement mechanism of this Chapter when, by virtue of the application of a measure that does not contravene the Agreement, they consider that the benefits that they could reasonably have expected to receive from the application of Chapters III to IX are nullified or impaired, except as provided for in respect of automotive investment, Chapter X, Chapter XIV, Chapter XV or Chapter XVI.

2. Paragraph 1 shall apply even if the Party against which an appeal is made invokes a general exception provided for in Article 22-01, except in the case of a general exception applicable to cross- border trade in services.

Chapter XX. Administration of the Treaty

Article 20-01 : The Administrative Commission.

1. The Parties create the Administrative Commission, composed of the heads of the responsible national bodies indicated in Annex 1 to this article, or by the persons designated by them. 2. It shall be the responsibility of the Commission:

a) to ensure compliance with and the correct application of the provisions of this Treaty;

b) evaluate the results achieved in the implementation of this Agreement, monitor its development and recommend to the Parties such modifications as it deems appropriate;

c) to intervene in disputes under the terms established in Chapter XIX;

d) supervise the work of all committees and working groups established in this Treaty and included in Annex 2 to this Article, which shall report to the Commission;

e) to monitor pricing practices and policies in specific sectors in order to detect those cases that could cause distortions in trade between the Parties;

f) recommend to the Parties the adoption of the necessary measures to implement its decisions; and

g) to deal with any other matter that may affect the operation of this Treaty or that may be attributed to it by any provision of this Treaty.

3. The Commission may:

a) establish and delegate responsibilities to ad hoc or standing committees, working groups and expert groups and supervise their work;

b) to 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 decisions shall be made unanimously. 5. The Commission shall meet at least once a year in regular session, which shall be chaired successively by each Party.

Article 20. National Sections.

1. The responsible national body of each Party shall designate its permanent official office or unit that shall act as the national section of that Party and shall communicate it to the other Parties:

a) the name and position of the officer in charge of its national section; and b) the address of its national section, to which communications are to be addressed.

2. The Commission shall supervise the coordinated operation of the national sections of the Parties.

3. It will correspond to the national sections:

a) to provide assistance to the Commission;

b) to provide administrative support to the arbitration tribunals;

c) on the instructions of the Commission, support the work of the other committees and groups established under this Treaty; and

d) to perform such other duties as may be entrusted to it by the Commission.

Annex 1 to Article 20-01. National Responsible National Bodies

The responsible national body of each Party shall be:

(a) in the case of Colombia, the Ministry of Foreign Trade or the body that replaces it;

(b) in the case of Mexico, the Secretaria de Comercio y Fomento Industrial or the body replacing it; and

(c) in the case of Venezuela, the Foreign Trade Institute or the body that replaces it.

Annex 2 to Article 20-01. Committees, Subcommittees and Working Groups

Committees:

-Committee on the Automotive Sector (Article 4-03)

-Committee on Agricultural Trade (Article 5-10)

-Committee on Phytosanitary and Zoosanitary Measures (Article 5-29)

-Committee on Sugar Analysis (Annex 3 to Article 5-04)

-Committee on Financial Services (Article 12-11)

-Committee on Standardization Measures (Article 14-17)

-Committee on Micro, Small and Medium Industry Committee (article 15-22)-Committee on Procurement (annex 8 to article 15-02)

-Committee on Competition (article 16-03)

-Committee on State Enterprise Practices (article 16-03)

Subcommittees

Subcommittee on Health Standardization Measures (article 14-17)

Working Groups:

-Working Group on Technical Standards and Agricultural Marketing Standards (article 5-09)

-Working Group on Rules of Origin (article 6-17)

-Working Group on Customs Procedures (7-11)

-Working Group on Professional Services (annex 1 to article 10-02)

-Temporary Entry Working Group (article 13-06)

Chapter XXI. Transparency

Article 21-01. 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 requested by a Party, the information center of another Party shall indicate the unit or official responsible for the matter and provide such support as may be required to facilitate communication with the requesting Party.

Article 21-02. 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. Each Party shall endeavor to:

a) publish in advance any measure; and

b) give the Parties and any interested party a reasonable opportunity to comment on the measure.

Article 21-03. Provision of Information.

1. Each Party shall, to the extent possible, communicate to any other Party having an interest in the matter, any measure that the Party considers may substantially affect or affect the interests of that other Party under the terms of this Agreement.

2. Each Party shall, at the request of another Party, provide it with information and promptly respond to its questions concerning any measure, whether or not that other Party has previously been informed of that measure.

3. The communication or provision of information referred to in this Article shall be made without prejudice to whether or not the measure is compatible with this Treaty.

Article 21-04. Guarantees of Hearing, Legality and Due Process.

1. The Parties reaffirm the guarantees of hearing, legality and due process enshrined in their respective legislation.

2. Each Party shall maintain judicial or administrative tribunals and procedures for the review and, where appropriate, correction of final acts relating 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 basis and grounds thereof are established.

Chapter XXII. Exceptions

Article 22-01. General Exceptions.

1. Article XX of the GATT and its interpretative notes are incorporated into and form an integral part of this Agreement for the purposes of:

(a) Chapters III through IX, except to the extent that any of their provisions apply to services or investment; and

(b) Chapter XIV, except to the extent that any of its provisions apply to services,

2. Nothing in:

(a) Chapters Ill to IX, insofar as any of their provisions apply to services;

(b) Chapter XIV, to the extent that any of its provisions apply to services; and

c) Chapters X and XI,

shall be construed to prevent any Party from adopting or enforcing measures necessary to secure compliance with laws or regulations not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection; 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 22-02. National Security.

1. In addition to the provisions of Article 15-19, nothing in this Agreement shall be construed to mean:

a) oblige a Party to provide or give access to information the disclosure of which it considers contrary to its essential security interests;

b) prevent a Party from taking any action 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 supplying a military institution or other defense establishment;

(ii) adopted in time of war or other emergency in international relations; or

(iii) relating to the implementation of national policies or international agreements on the non-proliferation of nuclear weapons or other nuclear explosive devices; or

c) prevent any Party from taking action in accordance with its obligations under the United Nations Charter for the Maintenance of International Peace and Security.

Article 22-03. Disclosure of Information.

Nothing in this Agreement shall be construed to require a Party to furnish or give access to information the disclosure of which would impede compliance with the laws of the Party or would 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 XXIII. Final Provisions

Article 23-01. Annexes.

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

Article 23-02. 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 23-03. 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 23-04. Entry Into Force.

1. This Agreement shall enter into force on January 1, 1995, once the communications certifying that the necessary legal formalities have been completed have been exchanged.

2. Paragraph 1 does not preclude a Party, in accordance with its law, from giving provisional application to this Agreement.

Article 23-05. Validity.

This Treaty shall have a minimum term of three years. Once this period has elapsed, its duration shall be indefinite.

Article 23-06. Reservations.

This Treaty shall not be subject to reservations or interpretative declarations at the time of its ratification.

Article 23-07. Accession.

1. This Treaty shall be open to accession by the countries of Latin America and the Caribbean, either for a country or group of countries, subject to prior negotiation between that country or group of countries and the Parties.

2. The accession will enter into force once the communications certifying that the legal formalities have been completed have been exchanged.

Article 23-08. Denounciation.

1. Any Party may denounce this Agreement. Such denunciation shall take effect 180 days after communicating it to the other Parties and communicating the denunciation to the General Secretariat of LAIA, without prejudice that the Parties may agree on a different term.

2. The denunciation of this Agreement by a Party does not affect its effectiveness between the other Parties.

Article 23-09. Evaluation of the Treaty.

The Parties shall periodically evaluate the development of this Agreement in order to seek its improvement and consolidate the integration process in the region, promoting an active participation of the productive sectors.